

Case :- CRIMINAL APPEAL No. - 594 of 2015

Appellant :- Amar Singh

Respondent :- State of U.P.

Counsel for Appellant :- Vyas Narayan Shukla, Ashok Kumar Singh, Anshuman Singh, Ram Suresh, Ravi Shanker Misra, Shudhanshu Shekher

Counsel for Respondent :- Govt. Advocate

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per. Hon'ble A. R. Masoodi, J.)

- (1) By means of the instant criminal appeal filed under Section 374(2) of Code of Criminal Procedure, 1973 the appellant Amar Singh has questioned the validity of the judgement and order dated 19.8.2010 passed by Additional Sessions Judge, Fast Tract Court-09, Pratapgarh in Session Trial No. 354 of 1997, whereby he has been convicted (i) under Section 147 IPC and sentenced to undergo six months imprisonment, (ii) under Section 148 IPC and sentenced to undergo one year imprisonment and; (iii) under Section 302/149 IPC whereunder he has been sentenced to life imprisonment with default stipulation. All the sentences have been directed to run concurrently.
- (2) At the outset, it may be pointed out that charge sheet was filed against twelve accused persons but during the period of trial, six accused persons, namely, Jamuna, Dharmraj Singh, Chinku Singh, Suresh Singh, Vijay Bahadur Singh and Ram Lakhan had died and therefore, the case against them stood abated. In these circumstances, trial was conducted against remaining six

accused persons viz. Daulat Singh, Amar Singh, Dinesh Singh, Shankar Singh, Udaibhan Singh and Buddhan and out of these six accused persons, four persons, namely, Dinesh Singh, Shankar Singh, Udaibhan Singh and Buddhan have been acquitted vide impugned judgement and order dated 19.8.2010.

- (3) The present criminal appeal has been filed by one of the convicts in the aforesaid case, namely, Amar Singh. Another appeal being Criminal Appeal No. 2475 of 2010 was filed by co-convict Daulat Singh, who also died during the pendency of appeal and as such, his appeal stood abated and dismissed as such by this Court vide order dated 23.11.2023.
- (4) Briefly stated, the facts of the case as put forth by the prosecution, as per the contents of the FIR, are that in the intervening night of 12/13.5.1989, the elder son Raj Bahadur and younger son Shiv Bahadur Singh of the complainant and son of aunt (mausi) Samar Bahadur Singh were sleeping in the 'sehan' (verandah) near the Chakki in front of their house and the complainant was studying on the roof in street light and the bulb glowing in front of their house and hence there was sufficient light. In the night at about 11.30 pm Dharmraj Singh son of Dhaukal Singh armed with gun, Daulat Singh son of Dhaukal Singh armed with country made pistol and Chinku son of Mahadev Singh carrying axe (pharsa), Amar Singh son of Chinku carrying country made pistol, who all were the residents of village Semri, PS Dhata, District Fatehpur accompanied with three or four persons

came to his door and started assaulting his brothers and son of aunt Samar Bahadur with gun, 'pharsa', country made pistol and 'lathis'. On their raising alarm, the complainant shouted from the roof whereupon Awadhraj son of Jagat Bahadur Singh, Sundar son of Shyammar, Ghaffar son of Rasool and Subrati son of Mirai and many other persons came there with lathi-danda challenging the assailants. Meanwhile, the assailants ran towards north. They were chased but could not be caught. The complainant and the witnesses identified Dharmraj Singh, Daulat Singh, Chinku Singh by name and others by face, in the light available on the spot. Brothers of complainant, namely, Raj Bahadur Singh and Shiv Bahadur Singh died on the spot.

- (5) On the basis of the said written report, a case was registered against the accused persons, namely, Dharmraj Singh, Daulat Singh, Chinku and Amar Singh alongwith 3-4 unidentified persons at P.S. Manikpur, District Pratapgarh.
- (6) After registration of the case, the Investigating Officer visited the spot, completed the necessary formalities and recorded the statement of the witnesses during the course of investigation.
- (7) After submission of charge sheet by the Investigating Officer, the case was committed to the court of sessions. On 19.10.2001, charges were framed against the accused Dharmraj Singh, Daulat Singh, Amar Singh, Chinku Singh, Suresh Singh, Dinesh Singh, Shankar Singh,

Udaibhan Singh, Vijay Bahadur Singh, Ram Lal and Buddhan Yadav under Section 147, 148, 302/149 IPC.

- (8) The case of accused persons was of denial and they claimed to be tried. As pointed out above, during trial, accused Dharmraj Singh, Chinku Singh, Suresh Singh, Vijay Bahadur Singh, Ram Lal and Jamuna died and the case against them was abated. Rest of the six accused were tried.
- (9) The prosecution examined nine witnesses in all, namely, PW-1 Dalbahadur Singh, PW-2 Jagdev Prasad Dwivedi, PW-3 Shri Krishna Dwivedi, PW-4 Sukhai Ram, PW-5 Dr U.S. Sinha, PW-6 Alam Husain Siddiqui, PW-7 Dr R.N.P. Misra, PW-8 Ramesh Kumar Mehta and PW-9 V.V. Singh.
- (10) After conclusion of prosecution witnesses the accused were examined under Section 313 Cr.PC wherein the accused persons denied their involvement in the incident in question and alleged that on the basis of fake investigation, they have been falsely roped in the present case. It was also alleged that the witnesses had given false statements. Accused Amar Singh stated that he is son-in-law of accused Dharmraj Singh. Accused Amar Singh claimed that being the relative of Dharmraj Singh and Daulat Singh, he has been falsely roped in. Accused Daulat Singh and Dinesh Singh added that they have been implicated on account of dispute relating to land. It is said that 3-4 days prior to the alleged incident, marriage of deceased Shiv Bahadur was celebrated and dacoity had taken place in the house of complainant wherein the deceased were killed and taking aid of the

incident, they have been falsely implicated. Accused Buddhan Yadav further added that the accused are from his village and that he is Yadav and the others (accused) are Thakur by caste and they used to sit together at times.

- (11) The first witness PW-1 is Dal Bahadur Singh, the complainant himself. He has supported the averments made in the FIR except a major contradiction in respect of the present appellant. In the FIR the complainant alleged that the appellant was carrying a country made pistol but in his statement before the trial court he specifically stated that Amar Singh was carrying a lathi. The suggestion that PW-1 might have been mistaken or could not recollect each and every detail does not stand to appeal as he himself admitted in his statement that he has lodged the FIR against the appellant by name as he saw him and other assailants in the light and he recognized Amar Singh very well. He alleged that he knew the assailant since before the incident in question. He also stated that marriage of the deceased Shiv Bahadur Singh took place four days before the date of incident. He also stated that the appellant (son of Chinku Singh) is the son-in-law of one of the accused Dharmraj, with whom a litigation in respect of consolidation proceedings was going on. He was also in litigation against Raghuraj and Vansh Bahadur much before the incident which was pending at the time of recording of statement. He further deposed that the assailants, who were carrying gun and country made pistol had fired with their weapons on all the deceased persons.

According to him, in all three gunshots were fired from a point blank range.

- (12) PW-2 Jagdev Prasad, a resident of the village is the witness who has proved the recovery of a pair of blood stained slippers which was taken into possession by the police and the signatures made by him on the Fard written by the SI on the spot.
- (13) PW-3 Shri Krishna Dwivedi who is also a resident of the village, deposed that the incident in question had occurred 18 years ago in 1989 at 11 pm in the night and that Raj Bahadur Singh, Shiv Bahadur Singh and Samar Bahadur Singh lost their lives in that incident. He reached the spot on hearing the commotion and saw that dead bodies of Raj Bahadur and Shiv Bahadur were lying and Samar Bahadur was badly injured. On reaching the spot he was informed about the incident and as such he did not see anyone assaulting the deceased persons. Later on, this witness was declared hostile. When his statement recorded under Section 161 CrPC was read over to this witness, he denied of having given any such statement.
- (14) PW-4 Sukhai Ram, retired SI, is the second Investigating Officer. He had taken over the investigation on 20.8.1992. After going through the the papers 1 to 20 filed by the earlier IO and recording statements of the witnesses, undertaking investigation and also perusing the prosecution statements and documents evidence as well as spot inspection, he found that the accused persons have committed offence under Section 147, 148, 149, 302 IPC.

He proved his handwriting and signatures over the charge sheet.

- (15) The next witness examined by the prosecution i.e. PW-5 is Dr U.S. Sinha, who had conducted specialized examination of the ante mortem injuries sustained by the deceased Samar Bahadur Singh on 4.2.93. He had proved the injury report submitted by him and his signatures made thereon. He made the following opinions in respect of the injuries sustained by the deceased Samar Bahadur Singh:

(i) That the death of Samar Bahadur Singh is certainly due to the ante mortem firearm injuries.

(ii) That in the post mortem report of the deceased, seven injuries are reported but injuries no. 1 and 2 are of grievous nature which in the normal circumstances are sufficient to cause death. Injuries no. 1 and 2 are on the frontal part of the neck. On the left side of the cerebrum there were injuries caused by the firearm. Injuries no. 3 and 4 could be caused due to fall and friction whereas injuries no. 5 and 6 have been opined to be caused by a blunt object and it is stated that there is possibility of firearm injuries having been caused by gunshot fired at a point blank range.

(iii) From an internal examination of the postmortem report it is definite that the death of Samar Bahadur Singh had caused due to gunshot having fired on the head of the deceased which is sufficient to cause death. The witness also deposed that the distance of firing is ascertained on the basis of blackening and tattooing. A point blank gun shot shall cause scratching because the skin singes due to flame.

- (16) PW-6 Alam Husain Siddiqui had proved the kayami report over the chik tahreer in respect of case crime no. 82/89 lodged on the basis of the report made by the complainant.
- (17) The next witness PW-7 is Dr R.N.P. Misra, who conducted the medical examination of injured Samar Bahadur Singh at C.H.C., Kalakankar. He proved the medical report drawn by him. He noted the following five injuries in his report as under:

(i) Gun shot wound in frond of neck and face in an area of about 20 cm x 12 cm causing multiple lacerations, some of which are communicating external atmosphere internally to trachea or respiratory passages as air is passing in and out alongwith respiration. Massive swelling of the neck is present in which multiple pellets are embedded around the neck, in front of the chest and face. Blackening left 2/3rd of chin alongwith upper and lower lips. Subcutaneous air is present in right side of the chest in lateral and back sides.

(ii) Incised would 5 cm x ½ cm x ½ cm on left frontal region of the head 5 cms upwards from the left eyebrow and 4 cms lateral to median line. Margins of the wound are clear. Wound is filled with fresh blood.

(iii) Incised wound 5 cms x 1/3 cm x 1/3 cm, 7 cms lateral to the median line and 4½ cms upwards from left eye brow. Margins clear and wound is filled with fresh blood.

(iv) Contusion 4 cms x 2 cms on dorsal aspect of metacarpophalangeal joint and proximal pharyngeal of left index finger with suspected fracture of proximal phalanx; advised x-ray.

(v) Contusion 5 cms x 3 cms in postero-lateral aspect of upper 1/3rd of right arm, 8 cms downward from right elbow joint.

In the opinion of the doctor, injury no. (i) was caused by fire arm and injuries no. (ii) and (iii) were caused by sharp weapon; injury no. (iv) was caused by blunt weapon and was kept under observation and injury no. (v) was caused by blunt object. The nature of injury no. (i) i.e., firearm injury was found to be dangerous and injuries no. (ii) (iii) and (v) were simple, while injury no. (iv) and was kept under observation and advised for x-ray. The patient was reported to have been brought in severe condition of shock and laboured respiration.

- (18) PW-8 Ramesh Kumar Mahto is the first Investigating Officer of the case. He was entrusted with the investigation on 13.5.1989 and prepared copy of the FIR, copy chik and recorded the statement of the complainant, witness Awadh Raj Singh. He also prepared panchnama of the deceased Raj bahadur Singh and Samar Bahadur Singh and sent the injured Samar Bahadur Singh to C.H.C., Kalakankar for medical treatment. He also took into custody one cartridge 12 bore, misfire cartridge, piece of lathi, blood stained bedsheet, Gamchha, vest and pieces of rope and prepared fard in relation thereto. He proved his signatures and handwriting on the related papers. According to him Panchnama of Raj Bahadur Singh was concluded on 13.5.1989 at 07:30 am and those of Shiv Bahadur Singh and deceased Samar Bahadur was

prepared at 10:30 and 14.35 and thereafter dead body was sent to district headquarter.

- (19) Since the doctor who had conducted postmortem i.e. Dr. Ashok Kumar had died, therefore, as a secondary witness Chief Pharmacist B.B. Singh, who was well versed with the handwriting and signatures of Dr. Ashok Kumar, was examined. B.B. Singh in his statement on oath proved postmortem report of all the three deceased persons and also verified the signatures of Dr. Ashok Kumar made thereon.
- (20) On being confronted with the evidence adduced by the prosecution, learned counsel for the appellant at the very outset argued that the FIR is anti-timed and anti-dated which renders the entire story set up by the prosecution as suspicious. Elaborating his argument, learned counsel has stated that PW-1, the complainant, during his examination in chief has stated that after the incident had occurred the police and SI reached the spot at about 12.30 in the night and stayed there all along the night and the next day they had taken them to the police station where they reached in between 8-9 am. In the morning, the report was lodged and a copy thereof was given to him. It is stated that the complainant in the same very statement had stated that since SI had not asked any question to them hence two applications were given at the police station. It is thus apparent that the subsequent application was given in the morning and therefore, the FIR is anti dated and anti timed. However, during the course of statement no question in this regard

was asked from the complainant in order to prove that there were two applications and both were contradictory in any manner.

- (21) The argument raised by the appellant that since there was enmity between the accused persons and the family of the deceased, they had implicated the appellant in the case whereas, as a matter of fact, there was marriage ceremony of Shiv Bahadur Singh on 7.5.1989, i.e. four days before the date of incident, and all the three deceased persons were murdered in a dacoity in their house after the marriage, does not inspire confidence and is vehemently denied by the prosecution. In rebuttal, it is stated that it cannot be believed that a person in whose family three members are murdered, anyone would let the real culprits go scot-free just to satiate the vengeance caused due to enmity in relation to some land. That apart, none of witnesses, except DW-1 Gazadhar has supported the plea of dacoity nor there is any evidence to establish such a fact though dacoity at a place is not an ordinary incident so as to be suppressed completely and keep it a secret. Thus, the plea of dacoity has rightly not been believed and dealt with by the trial court and in our opinion, the findings of guilt recorded by the trial Court cannot be said to be perverse or unreasonable.
- (22) To strengthen his arguments, learned counsel for the appellant has relied upon the decisions of the Supreme Court rendered in **Mohammad Muslim versus State of U.P.** (now Uttarakhand); **(2023) 7 SCC 350**, **State of Haryana versus Mohammad Younus & Others**

(2024) 3 SCC 180 and a Division Bench judgment of this Court rendered in the case of **Rajesh @ Pillu versus State of U.P.**, (Criminal Appeal No.887 of 2017 decided on 10.12.2019) and urged that the impugned judgment convicting the appellant is wholly erroneous and unjustified and the appellant deserves to be acquitted of the charges levelled against him.

(23) However, during the course of argument, learned counsel for the appellant has failed to establish any serious infirmities or perversity so as to enable us to alter the findings of guilt into an acquittal. In the case of **Mohammad Muslim (supra)**, the Hon'ble Court after analyzing the evidence on record came to the conclusion that the prosecution has failed to establish the presence of the son and nephew of the deceased at the site. Moreover, the presence of the appellant-accused was also found doubtful. On the contrary, in the case at hand, presence of the accused persons and the manner of incident has been proved by the prosecution beyond doubt which has fully been corroborated by the medical evidence.

(24) In the case of **State of Haryana versus Mohammad Yunus & Others (supra)**, the trial court has convicted accused Jamil and acquitted other persons and before the High Court, the acquittal of accused Akhtar Hussain was challenged, which came to be dismissed. The High Court dismissed the appeal of accused

Ghasita and Mohammad Jamil, whereas the appeal preferred by Mohammad Younus was allowed in part acquitting him of the charges under Section 302 IPC read with Section 34 IPC but maintained his conviction for offence under Section 323 read with Section 34 I.P.C. The State of Haryana preferred an appeal before the Hon'ble Supreme Court against the judgment of the High Court acquitting Mohammad Younus from the charges under Section 302 I.P.C. while convicting him under Section 323 I.P.C. before the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the judgment of the High Court and trial court convicting the appellant Mohammad Jamil for the offence under Section 302 read with Section 34 I.P.C., however, in view of the evidence on record, conviction of appellant Mohammad Jamil for the offence under Section 323 read with Section 34 was maintained. The Hon'ble Supreme Court upon analysing the evidence came to the conclusion that P.W.-7 had changed his stand and improvements were made by Deenu and Ahmad i.e. P.W.-8.

- (25) The aforesaid cases which have been relied upon by the learned counsel for the appellant are of no avail to him as in the present case, the testimonies of prosecution witnesses have fully been corroborated by medical evidence. Turning of one prosecution witness hostile would not be so fatal so as to disbelieve the

entire prosecution story, testimony of the witnesses and the medical evidence. In the present case, as discussed above, there is consistency in the statement of the witnesses and the prosecution has successfully been able to prove its case beyond reasonable doubt.

- (26) As regard the discrepancies in the statement of witnesses, it may be stated that from the statement of the prosecution witness it is proved that the incident had taken place in the manner as narrated in the FIR. The prosecution witnesses have fully corroborated the prosecution version, who are of the same village and their presence at the place of occurrence cannot be doubted as there are no contradictions in this regard and all the witnesses have deposed consistently in one line and their testimony inspires confidence.
- (27) Plea of relying testimony of interested witnesses have also been raised during the course of arguments. Merely because the prosecution witnesses are in relation or are of same caste, their evidence cannot *per se* be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more

often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Therefore, mere assertion of the appellant that he is innocent and has been falsely implicated would not be enough as he has to prove by clinching evidence. At this juncture, we would like to mention that in the case of **State of Rajasthan Vs. Smt. Kalki and Anr. (1981) 2 SCC 752** the Hon'ble Supreme Court distinguished between the related and interested witness. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested' .

- (28) Learned counsel for the appellant has lastly stated that it is not in dispute that all the three deceased received fire arm injuries which caused their death and this fact is corroborated from the postmortem report. The appellant has been assigned the role of carrying lathi which in itself is not sufficient to cause the death of the deceased and hence conviction and sentence of the appellant under Section 302/149 I.P.C. at par with other accused persons who were carrying fire arm is excessive and unjustifiable.

Therefore, the punishment awarded to the appellant, being excessive, deserves to be reduced or modified.

- (29) We have carefully gone through the evidence on record vis-a-vis findings arrived at by the trial court. The trial court has rightly appreciated the evidence while holding the appellant guilty alongwith other accused persons. The plea of FIR being anti timed and anti-dated does not hold good as it is a case where three persons have been murdered and it is quite natural that panchayatnama in such a case may consume more than usual time particularly when the incident has occurred during the late hours of the night. Insofar as the plea regarding two applications have been filed with regard to the incident in question is concerned, there is no other application on record except the one on the basis of which the FIR has been lodged nor there is any concrete evidence in this regard. Such a plea, as a first instance, seems to have been raised just to create an artificial flaw and affect the investigation and consequently the trial.
- (30) It is though apparent from the record that the death of the deceased persons occurred mainly due to fire arm injuries and this fact is not only corroborated from the postmortem but it is equally apparent from the manner of commission of offence, that irrespective of the role assigned to the accused

persons, all the culprits were part of unlawful assembly and had a common object of committing murder of deceased persons and had committed murder of three persons.

- (31) In our considered opinion, the judgment and order dated 19.8.2010 passed by learned trial court is a reasoned and well discussed judgment which does not suffer from any infirmity or error. The findings arrived at by the trial Court are based on correct and proper appreciation of evidence on record, even if it is assumed that there are slight contradictions. However, looking to the fact that the appellant is aged more than 70 years and is under long incarceration since 19.8.2010, i.e. about 14 years, coupled with the fact of remoteness of the incident, which took place about 36 years ago, and that the role of carrying lathi has been assigned to him in an incident where the cause of death is firearm injuries, we, while upholding and affirming the conviction of the appellant, reduce the sentence awarded to the appellant- Amar Singh to the extent of 20 years alongwith remission as per policy of the State, under Section 302/149 I.P.C. in place of life imprisonment.
- (32) This Court while exercising this power stands fortified under an apex court judgement rendered in the case of *Ravinder Singh v. State Govt. of NCT of Delhi Criminal Appeal No. 1031 of 2023 @ Special Leave Petition (Crl.) No. 1214 of 2018*

decided on 25.4.2023 of which para 15 lends complete support to the power exercised by this in reducing the life sentence under Section 302 IPC. Para 15 of the judgement reads as under:

*“15. The above observations manifest the applicability of the same principle in cases where the maximum punishment prescribed by law is imprisonment for life with nothing further. Even in such cases, it would be a parody of justice to allow the convicts so sentenced to avail the benefit of remissions and the like, liberally conferred by the State, and cut short the length of their life sentence to a mere 14 years. We are, therefore, of the considered opinion that the law laid down in **Swamy Shraddananda** (supra) and **V. Sriharan** (supra) with regard to special category sentencing to life imprisonment in excess of 14 years by fixing a lengthier term would be available to the High Courts and this Court, even in cases where the maximum punishment, permissible in law and duly imposed, is life imprisonment with nothing further. We must, however, hasten to add that exercise of such power must be restricted to grave cases, where allowing the convict sentenced to life imprisonment to seek release after a 14-year-term would tantamount to trivializing the very punishment imposed on such convict. Needless to state, cogent reasons have to be recorded for exercising such power on the facts of a given case and such power must not be exercised casually or for the mere asking.”*

- (33) The impugned judgment and order shall stand modified to the aforesaid extent. The appellant- **Amar Singh** shall continue to remain in jail to serve out the remaining period of sentence in terms of this order.
- (34) Subject to aforesaid modification, the criminal appeal is dismissed. Cost easy.

(35) Let a copy of this judgment along with lower Court record be sent to the Court concerned for compliance and the compliance report be submitted to the Senior Registrar of this Court.

(Ajai Kumar Srivastava-I,J.) (A. R. Masoodi,J.)

Order Date :- August 09, 2024

Fahim/-

Criminal Appeal No. 594 of 2015