

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

Neutral Citation No. - 2024:AHC-LKO:7368-DB

Reserved on:04.10.2023

Delivered on:25.01.2024

Court No. - 9

Case :- CRIMINAL APPEAL No. - 2086 of 2009

Appellant :- Satish S/O Harcharan Yadav

Respondent :- State of U.P.

**Counsel for Appellant :- S.K.I. Naqvi, Atul Verma, B.M. Sahai, Furkan
Pathan**

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Rajan Roy, J.)

1. Heard Shri Arif Ali along with Shri Furkan Pathan, learned counsel for the appellant and Shri Umesh Chandra Verma, learned A.G.A. for the State.

2. This is a Criminal Appeal under Section 374 Cr.P.C. preferred by the appellant challenging his conviction and sentencing vide judgment dated 03.09.2009 passed in Sessions Trial No. 1033 of 2003 (State Vs. Satish), arising out of Case Crime No. 94 of 2003, under Sections 302, 504, 506 IPC, Police Station - Malihabad, District - Lucknow.

3. The appellant has been convicted for the offence punishable under Section 302 IPC and sentenced to life imprisonment with fine of

Rs.10,000/- failing which he would have to undergo additional imprisonment for six months.

4. The prosecution case in nutshell is that in the night intervening 15/16.05.2003 at about 01.30 a.m. the deceased and the appellant, who had gone along with 'barat' to another village, had returned by Bus. They alighted from the bus towards the Eastern flank of the road along with other villagers whereupon appellant- Satish, who was carrying a gun, challenged the deceased and shot him with his gun. When the witnesses and villagers chased to catch him, he fled away waving his gun. An F.I.R. was lodged at Police Station - Malihabad, District - Lucknow bearing Case Crime No. 83 of 2003 on 16.05.2003 at 02.00 am. i.e. within half an hour of the incident by PW- 1. PW-2 took the injured to the hospital where he died. Initially the F.I.R. was lodged under Sections 307, 504, 506 IPC, but, after receiving information about death of the injured it was changed to Sections 302, 504 506 IPC. The bus had stopped on the road towards the Eastern flank, whereas, there were shops etc. on the Western flank of the road. Some of the shops belonged to the deceased and his family. Motive for the murder was a prior altercation/dispute between the parties with regard to purchase of a land belonging to the appellant's father.

5. The inquest was conducted on 16.05.2003 from 7.30 a.m. to 10.50 a.m. The inquest report is Ex. Ka- 2.

6. The postmortem was conducted on 16.05.2003 at about 3.00 p.m. The postmortem report is Ex. Ka-9.

7. The Investigating Officer recorded the statement of witnesses and collected evidence. Ex. Ka-11, Ex. Ka-12 and Ex. K-13 are recoveries memos pertaining to recovery of plain and blood stained soil from the scene of crime, empty 12 bore cartridge and bulbs from the shops at the scene of crime and SBBL gun allegedly used for the commission of

Crime. Ex. Ka-15 and Ex. Ka-16 are the Forensic Reports pertaining to the matching of empty cartridge with the test cartridges from the SBBL gun recovered and plain with the blood stained soil, respectively. Ex. Ka-10 is the site plan. Based thereon he filed a charge sheet against the appellant. Charges were framed against him on 12.01.2004 under Sections 302, 504, 506 IPC. He denied the charges. He, therefore, was put to trial.

8. The statement of the accused/appellant was recorded under Section 313 Cr.P.C. wherein he denied the charges and alleged that some unknown person had shot Lekhnath dead sometime in the night and nobody could see the incident, but, with a view to usurp the land of his father, he has been falsely implicated by PW-1 and PW-2.

9. The trial Court after considering the evidence on record convicted the appellant of the offence punishable under Sections 302, 504, 506 IPC and sentenced him as already mentioned hereinabove.

10. The contention of the appellant's counsel in nutshell was that the lacerated wound on the body of the deceased has not been explained, the presence of the alleged eye-witnesses at the scene of crime at 1.30 a.m. is highly doubtful, the F.I.R. is ante-timed, the eye-witnesses did not see the crime and the entire story has been cooked up on mere suspicion based on the alleged altercation, forensic report Ex. Ka- 15 does not support the prosecution case, the driver of the vehicle by which the injured was taken to the hospital has not been examined nor has the owner been examined. All alleged eye-witnesses are related and interested witnesses. The appellant has been falsely implicated with intent to usurp the land belonging to his father on much less consideration than what it should fetch. There is no recovery of clothes from PW-1 and PW-2 who has stated about their clothes being blood stained nor the same have been examined. The trial Court has not

appreciated the evidence in the right prospective and convicted the appellant on conjectures and surmises, therefore, the appeal is liable to be allowed.

11. Learned A.G.A. has opposed the appeal. He has submitted that the ocular and medical evidence on record clearly point towards the guilt of the appellant. The medical evidence supports the ocular testimony. Merely because in the forensic/ ballistic examination the empty cartridge recovered from the scene of crime did not match with the test cartridge fired from the gun recovered, is not sufficient to belie the prosecution case in view of the ocular evidence. The ocular evidence is unimpeachable. There are no inconsistencies therein nor any contradictions and none have been pointed out. The F.I.R. is prompt. The motive is also proved. For all these reasons, he submitted that the appeal is liable to be dismissed.

12. As per the postmortem report following injuries were found on the body of the deceased:-

"1. Firearm wound of entry 3 cm X 2.5 cm X chest cavity deep present on Rt. side back of the chest just below the interior angle of the Rt. scapula, margins inverted, irregular, blackening present around the wound. On opening ecchymosis present underneath the injury. Rt. side lung with pleura, Rt. ventricle of the heart along with pericardium lacerated about 2 liter clotted and fluid blood present in thoracic cavity. One wade piece and 23 metallic pellets recovered from the muscle at the heart and lung & chest cavity and send to SSP, Lko. in a double seal envelope through CP concerned."

13. The cause of death was shock and Haemorrhage as a result of ante-mortem firearm injury as is mentioned in the postmortem report.

14. PW- 7 the doctor, who conducted the autopsy, has proved the postmortem report. He has reiterated that the cause of death was shock

and Haemorrhage due to firearm injury. In his cross-examination he has stated that the shot must have been fired upon the deceased from a distance of 4-6 feet. In his cross-examination the defence was not able to impeach his credibility in any manner nor create a doubt about the medical evidence.

15. From the medical evidence on record it is evident that death was homicidal. The only question is as to whether the appellant murdered him or not.

16. The place of occurrence is proved from the Forensic Report Ex. Ka-13, according to which, the plain soil and the blood stained soil collected from the scene of crime, have matched. The site plan Ex. Ka-10 has been prepared on the identification of the eye-witnesses, especially, the informant PW-1.

17. As per site plan and the testimony of the eye-witnesses, the incident happened near a 'Pucca' road known as 'Mohan Road' on the Western flank of the road. There are shops, four of which belonged to the deceased and his family and in one of them PW-1 used to carry out work of battery charging. Across the road there is a 'chappar' and a place where the deceased and his family used to tie cattle and feed them. The cross mark on the site plan is the place where the deceased was shot and fell down injured. Place 'A' is where the blood was found. Place 'B' is where the empty cartridge was found. The distance of place 'A' from the road is two steps, whereas, the distance of the shops from the road is about 20 steps. It has come in the testimony of witnesses PW-1 and PW- 2 that the road itself is about 12-13 feet wide. It is said that the deceased and the assailant alighted from the bus on the Eastern flank of the road. Thereafter, while the deceased had moved towards the shop situated on the Western flank of the road and had taken barely 3 or

4 steps the assailant challenged him and shot him from behind. The deceased sustained firearm injuries on the back of his chest.

18. It has come in the testimony of PW-1 and PW-2 that the injured, who subsequently died, was taken to police station on a vehicle and as the police station is situated barely six kilometers away and the incident itself happened on a motorable road, therefore, the lodging of F.I.R. is prompt.

19. As regards forensic examination of the SBBL gun bearing No. 8746 of 2000 recovered from the gun house where it had been deposited on 24.05.2003 about 9 days after the incident and the empty cartridge recovered from the scene of crime with the test cartridges fired from the gun, Ex. Ka-12 is the Forensic report, according to which, the empty cartridge, which had been recovered from the scene of crime, had not been fired from the said gun. As regards pellets and wad piece recovered from the body of the deceased, no definite opinion has been given as to whether they had been fired from the said SBBL gun or not.

20. The prosecution case however is based on direct evidence.

21. PW-1 is the son of deceased. He has stated about his presence along with his uncle PW-2 at the scene of the crime where their shops were situated. The family lives jointly. He has also stated that there is an electricity connection in the shops and the bulbs were on. At about 1.30 a.m. on 16.05.2003 the bus, which had taken the 'barat', came back. All the passengers alighted from the Bus in front of his shop. PW-1 and others were still awake. The bus went away towards Dariyapur. Just as his father moved towards the shops after alighting from the Bus the assailant- Satish shot him from the back from his licensed gun. The shot hit the deceased on the right side of the back and he fell down. Only one shot was fired. He along with others ran to catch the assailant but he threatened them with his gun. PW-1 his uncle went to fetch a

vehicle and took him to the police station. He has proved the 'tehrir' given by him at the Police Station i.e. Ex. Ka-1. He has stated that while he stayed at the police station to lodge the F.I.R. others took the injured to the hospital. He has also stated in examination-in-chief about a prior dispute regarding to purchase of certain land belonging to the assailant's father at a lower price than what was being demanded by the assailant and threat extended by the assailant in this regard to his father.

22. In cross-examination he (PW-1) has stated that when his father was shot he was 12-13 steps away from the shop, almost on the road. He has stated that the road is about 12-13 feet wide. The assailant-Satish had alighted from the Bus on the Eastern flank of the road on account of which he could not see him, but, when the bus went away the assailant challenged and shot his father. His father had moved barely 3-4 steps towards the shop when he was shot. He had crossed about half the road. His father had fell down immediately on being shot without being able to raise an alarm. After shooting his father the assailant ran towards South. He has described the scene of crime. He has stated that his uncle PW-2 went to fetch vehicle within 10-12 minutes of the firing. The vehicle was barely one 'farlong' away. The owner of the vehicle was woken up. The vehicle arrived between 15 minutes. There is a 'pucca' road from the house of the owner of the vehicle to the scene of crime. He along with PW-2 took the injured to the police station which is situated barely six kilometers away and reached there at about 2.00 a.m. His father was still alive but was unable to speak. The Police Constable took his injured father to the hospital and his uncle PW-2 also accompanied with him in the vehicle. He (PW-1) remained at police station.

23. In cross-examination he (PW-1) has also stated that his father was shot at within two minutes of alighting from the bus. He has stated that he was about 10-12 steps towards West when his father was shot. He has reiterated that the assailant ran away towards the South. He has

written the report at his shop before going to the Police Station. This took barely 6-7 minutes. He has reiterated the prior dispute between assailant and his father pertaining to purchase of a land. There is nothing in his cross-examination by the defence which could discredit him or impeach his credibility.

24. Considering the situation of his shop by the side of the scene of crime near the road as also the situation of a 'chappar' and feeding place of his cattle on the Easter flank of the road, his presence at the scene of crime at 01.30 a.m. can not be said to be improbable or in any way unnatural, especially as, it has come in the testimony of PW-2 that the work of charging of battery is to be done in the night. While it is true that the F.I.R. was lodged within half an hour of the incident it is equally true that vehicle was available for taking the injured to the police station nearby and there was a 'pucca' road and in the circumstances which presented themselves, the injured must have been taken to the Police Station at break neck speed without there being much traffic at 01.30 in the night. Though, the time of incident is mentioned as 01.30 and the lodging of the F.I.R. at 02.00 a.m. a slight variation of a few minutes in the time of incident can not be ruled out and but, lodging of the F.I.R. at 02.00 a.m., can not be doubted.

25. PW-6 the then Head Mohrrir at police station Malihabad has stated about making GD entries about the information on 16.05.2003 at 02.00 a.m. and has proved the same i.e. Ex. Ka-7. He has also stated that after receiving information of the death of the deceased the sections were changed from 307, 504, 506 IPC to Section 302, 504 and 506 IPC.

26. The inquest report mentions about the person who informed about the death of the deceased as one Udai Kumar of the Medical College which also tallies with the sequence and events, as, the injured died in the Medical College, therefore, the information was received

from the Medical College. The inquest was conducted on 16.05.2003 at 07.30 a.m. which ended at 10.50 a.m.

27. PW-8 the then Sub-Inspector at Police Station - Malihabad who had initially investigated the matter till the investigation over by the Station Officer i.e. PW-9, has stated about reaching the scene of crime at 03.30 a.m. and also of recording the statement of Jai Shri Prasad and informant- Aniruddh Singh and visiting the scene of crime along with PW-1 Aniruddh Singh.

28. PW- 2 is the uncle of PW-1 and brother of the deceased. He has stated that family was joint and it is the deceased who being elder brother who used to look after all the affairs of the family, therefore, in view of situation of the shops near the scene of crime as also the 'chappar' and feeding place for cattle of the family, his presence at the said place can also not be said to be improbable or unnatural. Nothing has been brought about in his cross-examination so as to make his presence at the scene of crime doubtful. The sequence and events narrated by the PW-2 is similar to that narrated by the PW-1. There is no inconsistency between the two statements. There are no contradictions in the testimony of PW-2 and none have been brought forth which could materially prejudice the case of the prosecution. He has stated that he along with his nephew (PW-1) were sitting at the shop at 1.30 a.m. on 16.05.2003 when his brother the deceased came back by bus after attending the 'barat'. When his brother alighted from the bus the assailant- Satish, whom he identified as being present in the Court, also alighted carrying his licensed gun. The lights were on. It was full moon night and visibility was good. His brother moved towards his shop whereupon the assailant shot him with his gun which hit him on the right side of the back. PW-1 gave information about the incident at the police station. One police constable from the police station took the injured to the hospital and on reaching there the injured was declared dead. He has also spoken about a prior dispute/ altercation between the

deceased and the assailant about the purchase of a land belonging to the assailant's father at a price lesser than what was being demanded by the assailant as also threats issued by the assailant at that time.

29. In cross-examination he (PW-2) has stated that Malihabad Mohan road is about 10 feet wide. Two buses can easily pass on the said road. The bus from which assailant and deceased had alighted was standing on the Eastern flank of the road. It stopped for 10-15 minutes. Several villagers alighted therefrom. He has stated about the distance of the shops from the Western part of the road as 8-10 steps and from the Eastern part of the road the distance was 15-16 steps. Like PW-1, he has also stated that the deceased - Lekhnath could not even reach the shops. He was about 14-15 steps from the shop. After alighting from the bus Lekhnath was crossing the road and had reached the Western flank of the road. He was shot while he was crossing the road. He fell down on the Western flank of the road. This testimony tallies with that of PW-1 and site plan also tallies with their testimony. It is true that he as also PW-1 have stated that there was blood on their clothes probably because they had hugged the injured, but, there is no recovery of such clothes but this is a lapse on the part of the investigation and will not ennure to the benefit of the appellant herein and will not by itself belie the prosecution case. He has denied the suggestion that he and PW-1 were not present at the scene of crime when Lekhnath was shot and also that they were falsely implicating the appellant. In cross-examination the defence has not been able to impeach the credibility of this witness in any manner.

30. PW-3 is related to PW-2 Laxmi Narayan but he belongs to the same village and has clearly stated that he had also gone to attend the 'barat' of Munna at village Dibiya Kakori Lucknow on the said date. The 'barat' returned on 16.05.2003 and the bus stopped at Dariyapur i.e. the scene of crime and he along with villagers alighted from the Bus. Assailant- Satish also alighted carrying his licensed gun. As soon as

they moved 4 or 5 steps ahead after alighting, Lekhnath moved towards the shop, the assailant challenged him, ran from behind and shot him with his licensed gun. When he along with others tried to catch the assailant he threatened them with his gun with dire consequences and ran towards the South. He identified the assailant who was present in Court as the one who had fired upon Lekhnath. He has also spoken about there being sufficient visibility on account of electricity bulbs which were lit. It is pertinent to mention that his presence at the scene of crime as an eye-witness is mentioned in the F.I.R which has been lodged promptly. In cross-examination the defence has not been able to impeach his credibility in any manner.

31. PW-4 is the employee of the Chauhan Gun House. The gun was deposited in the said gun house on 24.05.2003 by some person other than the assailant who in fact surrendered in Court on 31.05.2003 where statement was recorded and thereafter, recovery was made. Of course, in view of forensic report dated 16.10.2003 Ex. Ka- 15, the empty cartridge recovered from the scene of crime when compared with the test cartridges fired from the said SBBL gun have not matched but this by itself does not help the appellant in view of the unimpeachable ocular evidence of PW-1, PW- 2 and PW-3. Tampering with firing pin etc. of the gun before its deposit is a possibility. The injuries on the body of the deceased mention blackening as being present which shows that the shot was fired from close distance and considering the ocular testimony as also the site plan, even though, the place from where the assailant fired the shot, is not mentioned in the site plan nor in the testimony, but, considering the facts of the case and the distance of the Eastern flank of the road where the assailant and the deceased alighted to the Western flank of the road as also the scene of crime right side and the shop, it is apparent that the shot was fired from close distance. The road as has come in the testimony of PW-1 is about 12-15 feet wide. PW-2 has stated that it is about 10 feet wide but this minor variation is

not material. It has come in the ocular testimony that the deceased moved towards the Western flank about 3 or 4 steps when the assailant coming from behind shot him and Lekhnath fell barely two steps from the Western flank of the road. All this corroborates the ocular testimony. The medical evidence also corroborates the ocular testimony. The fact that wad piece was found in the body of the deceased, is also evidence of the fact that the shot was fired from close range. Considering the distance as discussed hereinabove, there is no such contradictions and discrepancy so as to belie the prosecution case. The other two injuries one lacerated wound and other abraded contusion could have been caused due to fall as a result of the fire arm injury.

32. The testimony of PW-1, PW-2 and PW-3 is reliable and it is sufficient to convict the appellant for the offence punishable under Section 302, 504 and 506 IPC, as, has rightly been done by the trial Court.

33. In view of the above discussion, we are of the opinion that the appellant has rightly been convicted by the trial Court of having committed the offence punishable under Section 302, 504 and 506 IPC and has been rightly sentenced.

34. The appeal lacks merits and is **dismissed**.

35. The original records shall be remitted back to the trial Court for necessary action as per law.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy, J.)

Order Date :-25.01.2024

R.K.P.