



2025:AHC:160411-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2167 of 1984

Kunwar Pal And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Narendra Kumar, Rahul Misra, Rajiv Lochan Shukla, Ravindra Singh
Counsel for Respondent(s)	: A.G.A

Court No. - 44

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE TEJ PRATAP TIWARI, J.**

1. Heard Sri Rahul Mishra alongwith Sri Narendra Kumar, learned counsel for the appellant and Ms. Archana Singh, learned AGA-I for the State.
2. Present criminal appeal arises from the judgement and order dated 08.08.1984 passed by Sri O.P. Jain, learned IVth Additional District & Sessions Judge, Mainpuri, in Sessions Trial No. 394 of 1983 (State vs. Kunwar Pal, Vishwanath Singh and Raj Bahadur). By that order, learned Court below has convicted the present appellant Vishwanath Singh for offence under Section 302 I.P.C. It has also convicted the other appellants Kunwar Pal Singh and Raj Bahadur for offence under Section 302/34 I.P.C. It has sentenced all the appellants with life imprisonment.
3. Upon appeal being filed, the appellants were granted bail.
4. The prosecution story emerged on the Written Report (Ex.Ka-1) submitted by the cousin of the deceased Dr. Krishna Pal Singh, namely, Raghuveer Singh (P.W.-1). That Written Report was written by Ajeet Pratap Singh resident of village Bhatani (not examined). In that, it was disclosed that the deceased was a medical doctor. On 20.07.1983 at about 6:30 p.m., he left his house to treat the son of one Chandrapal of village Netrapur. He did not return till 9:00 p.m. Then, the first informant Raghuveer Singh (P.W.-1) - the real brother of deceased Shivram Singh (P.W.-3), Habib Ali (P.W.-2) and Tejveer Singh (not examined) went out in search of the deceased. At 9:30 p.m., they reached near the railway line. They heard the cry for help that appeared to be of the deceased. On climbing on to the elevated railway track, in torch light, they saw one male person had been pinned to the ground by three others. In that, the appellant Vishwanath Singh was sitting across the

chest of the victim thrusting a knife on his neck. The appellant Kunwar Pal Singh was holding the victim by his legs while the third appellant Raj Bahadur was holding the victim by his hands. On torch light being pointed at them and alarm being raised by the informant side, the assailants let go the victim and ran towards village Tindauli across the river Arind. At that time, the appellant Vishwanath Singh was holding a knife in his right hand as was visible to the informant side under moon light and in torch light. They recognized the accused. By the time, the informant side reached the victim Dr. Krishna Pal Singh, he was unconscious and struggling. As the informant called out the deceased (then injured), he died. After the occurrence, an alarm being raised, a lot of villagers and people living nearby gathered, at the place of occurrence. However, it being night time, the informant did not report the matter to the police, at that hour.

5. On that Written Report, the F.I.R. (Ex.Ka-16) was registered at Police Station Dannahar, Mainpuri at 9:15 a.m. on 21.07.1983 under Section 302 I.P.C. The distance of the police station from the place of occurrence is disclosed at 2 kilometer.

6. Thereafter, the F.I.R. narrated the motive for the occurrence, namely, about 10 -12 days prior to the occurrence, on the information given by deceased to the police, illicit liquor of appellant of Vishwanath Singh and his father Ganga Singh was seized by the police. For that reason, the accused had threatened the deceased on 2 - 3 earlier occasions, at his residence. The next morning, they reached for accused persons at their house. However, they were not found.

7. Thereafter the Investigation Officer, Sub-Inspector Ompal Singh Tomar (P.W.-5) recovered samples of blood stained and plain earth from the place of occurrence, on 21.07.1983. The same day, he also recovered a leather bag found lying next to the deceased. That Recovery Memo is Ex.Ka-10. Also, on the same day, an electric torch was recovered from Raghuveer Singh. It was given in the supurdgi of the said Raghuveer. That Recovery Memo is Ex. Ka-11 at the trial. Also on 21.07.1983 between 10:30 a.m. and 11:30 a.m. Inquest Report was prepared by Sub-Inspector Ompal Singh Tomar (P.W.-5). It is Ex.Ka-3. Then on 22.07.1983, the autopsy examination was conducted at 4:30 p.m. on the dead body of the deceased by Dr. A.K. Upadhyay (P.W.-4). In that single ante-mortem injury was noted as below :-

Ante mortem injuries :-

(i) Spindle shaped incised wound 3 cm x 1cm x muscle deep on the front of neck 5 cm above from supra-sternal notch at 12'

o'clock position margins & angles are sharp and clean cut.

8. The time of death was opined to be one and a quarter day earlier. Death was disclosed to have been caused due to respiratory failure due to ante-mortem injury. The trachea was found punctured. The Autopsy Report is Ex.Ka-2 at the trial.

9. Upon conclusion of investigation, the Investigation Officer submitted charge sheet. On the case being committed for trial to the court of Sessions, following charges came to be framed against the appellant Vishwanath Singh :-

"That you on 20.07.1983, at about 9:30 P.M. near the bridge of Arind Nadi, near Railway Line situate near Nagla Dashrath within the police circle of Dannahar, District Mainpuri, did commit murder of by intentionally causing the death of Dr. Krishna Pal and thereby committed an offence punishable under Section 302 of Indian Penal Code and within the cognizance of this Court."

Against the other appellants, namely Kunwar Pal Singh and Raj Bahadur, the following charge was framed :-

"That you on 20.07.1983, at about 9:30 P.M. near the bridge of Arind Nadi, near Railway Line situate near Nagla Dashrath within the police circle of Dannahar, District Mainpuri, Vishwa Nath Singh had committed murder of Dr. Krishna Pal by intentionally causing his death and the said offence was committed in your presence and you had aided the commission of the said offence, and you have thereby committed an offence punishable u/s 302 read with Section 114 of the Indian Penal Code and within the cognizance of this Court."

10. At the trial, besides relying on the above documentary evidence, the prosecution proved its case on the strength of oral evidence led by five witnesses. In that Raghuveer Singh (P.W.-1) was examined as an eye witness. He had lodged the F.I.R. Habib a neighbour of the deceased was examined as P.W.-2 again as an eye witness and third the brother of deceased, namely, Shivram Singh was examined as P.W.-3 also as an eye witness. All three witnesses proved that they had gone in the search of Dr. Krishna Pal Singh (the deceased) around 9:00 p.m., on 20.07.1983. On reaching near the railway line, they heard cry for help which they believed was of the deceased. They climbed about 8 to 10 feet on to the elevated railway line from where they saw the assault being committed by appellant Vishwanath Singh while the other two appellants Kunwar Pal and Raj Bahadur were holding the deceased by his hands and feet. On alarm being raised by the witnesses, the assailants ran east, across the river Arind. In that

they also challenged the witnesses to not obstruct them or else they too would be killed. The entire occurrence was seen by the witnesses under moon light and in torch light.

11. Then Dr. A.K. Upadhyay was examined to prove the autopsy examination and cause of death. Besides proving the facts that the deceased suffered only one injury on his throat, during his cross-examination, he clarified that the injuries may not have been caused with a knife that may have a sharp edge on one side only. He did not deny the suggestion that the injuries may have been caused by a spear or sharp edged weapon with sharp edges on both sides.

12. Last, Sub-Inspector Ompal Singh Tomar was examined as P.W.-5 to prove the investigation. In that he further proved that he arrested the appellant Kunwar Pal Singh on 21.07.1983 itself at about 7:30 p.m. and had submitted the charge sheet on 26.07.1983 i.e. within a week from the occurrence.

13. Thereafter, the statement of the appellants were recorded under Section 313 Cr.P.C. Further, the defence led evidence through Balbeer Singh (D.W.-1) who proved that the deceased stood surety of Ganga Singh, the father of the appellant Vishwanath Singh in a Criminal Case No. 109 / 1983, Police Station Dannahar under Section 60/63 U.P. Excise Act. The said document was marked as Ex.Kha-1.

14. In such facts, the learned court below has convicted the present appellants on the strength of ocular evidence led by Raghuveer Singh (P.W.-1), Habib (P.W.-2) and Shivram Singh (P.W.-3).

15. Submission of learned counsel for the appellants is, the F.I.R. is delayed by 12 hours. There is absolutely no reasonable explanation for that long delay. Therefore, the prosecution story is rendered doubtful.

16. Second, Chandra Pal was never examined by the prosecution. Further, it is doubtful if the deceased was carrying his leather bag when he was killed. Reference has been made to the statement of Sub-Inspector Ompal Singh Tomar (P.W.-5), to suggest that the said leather bag was introduced at the crime scene, later. Therefore, the basis of the prosecution story that the deceased had gone out at 6:30 p.m. to treat the son of Chandra Pal, is not established.

17. Third, wholly co-incidentally and therefore, an inherently doubtful narration has been offered by the prosecution, in the above noted circumstances. There was any occasion for Habib (P.W.-2) to visit Tejveer

the brother of Raghuveer Singh (P.W.-1) at late hour (9:00 p.m.), to buy kerosene oil and thread. In any case, the three witnesses co-incidentally got together and suddenly decided to search the deceased at 9:00 p.m. In that further co-incidentally, they reached near the elevated railway line. They heard a cry for help from across that railway line. Obviously they could not have seen anything across the railway line as it was elevated by 8 to 10 feet for reason of a nearby bridge over the river Arind (as reflected in the site plan as well). They climbed on to the elevated railway line and from a distance of about 28 paces they claim to have seen the exact occurrence as it was caused namely, a single blow with a sharp edged weapon caused by Vishwanath Singh. Though, the witnesses were armed with lathis, they did not offer any challenge and stood their ground waiting for the assailants to flee, ostensibly holding out a threat to harm the witnesses if they came in their way. Whatever worth the prosecution story may carry, that coincidental occurrence was not reported to the police for over long 12 hours. Clearly, the presence of witnesses is wholly doubtful. Therefore, the narration of the occurrence is unbelievable.

18. Besides, the improvements made at the trial of chase being offered by the witnesses, it has been submitted that there is absolutely no recovery to corroborate the prosecution story inasmuch as neither the knife nor the blood stained clothes of the appellants were recovered nor the medical evidence corroborates that the occurrence may have been caused with a single edged knife. In fact the medical evidence suggests that the occurrence was caused with a spear like sharp edged weapon that may have more than one sharp edge. Though, motive may not be relevant in a case of direct evidence yet, in the present case that evidence is wholly doubtful. Prosecution has offered a completely false motive.

19. On the other hand, learned AGA would submit, Mainpuri was dacoity affected areas, at the time of occurrence. The first informant Raghuveer Singh (P.W.-1) clearly narrated, he could not lodge the F.I.R. at 9:00 p.m. as he was afraid. The other witness of fact have also made similar statements. In dacoity affected areas, it is not uncommon rather it is natural that the villagers would not move out at the risk of their life and property, during night hours. Therefore, the F.I.R. lodged at 9:30 a.m., the next morning, was wholly prompt.

20. Relying heavily on the statements made by Raghuveer Singh (P.W.-1), Habib (P.W.-2) and Shivram Singh (P.W.-3), it has been stressed that they are not chance witnesses. Raghuveer Singh (P.W.-1) is a cousin of the deceased while Shivram Singh (P.W.-3) is the real brother of the deceased.

Habib (P.W.-2) is a neighbour. They were naturally concerned about the well-being of the deceased. Therefore, they went out in his search and saw the occurrence, as narrated by them. No material improvement or contradiction or other doubt emerged during the cross-examination of any of those three witnesses. As to source of light, there was enough. The witnesses clearly proved that it was a moonlit night and Raghuveer Singh (P.W.-1) was carrying a torch which was also recovered by the Investigation Officer Ompal Singh Tomar (P.W.-5). There is no reason to doubt the same. The assailants being known from before, they were easily identified by the witnesses.

21. In face of such strong ocular evidence, minor discrepancies including the medical opinion must remain in the background. Those doubts may never lead to discarding the ocular evidence.

22. Last, it has been submitted, absence of motive and lack of recovery are not relevant as the prosecution story has been proven on the strength of strong ocular evidence.

23. Having heard learned counsel for the parties and having perused the record, before the ocular evidence may be tested, it requires consideration if the F.I.R. was lodged promptly. Undoubtedly, Mainpur was a dacoity affected area in the year, 1983. At the same time, the prosecution did not allege or suspect the commission of dacoity or commission of the occurrence by dacoits. On the contrary, the consistent narration by the prosecution is, motivated by the fact that the deceased was a police informer in an earlier excise case lodged against the father of the appellant Vishwanath, namely, Ganga Singh, the appellants had caused the occurrence.

24. Second, it is the prosecution case - soon after the occurrence, besides the three witnesses and the family members of the deceased including his wife and mother, about 40 to 50 villagers [as cited by Raghuveer Singh (P.W.-1)] / or about 15 to 20 villagers [as cited by Habib (P.W.-2)], and 50 to 60 villagers [as cited by Shivram Singh (P.W.-3)], arrived and they kept visiting the place of occurrence through the night. Both, for reason of presence of ladies as also for reason of number of persons who visited not only from the village of the deceased but other place as well, it is difficult to accept that fear was a disabling factor or that it prevented the first informant from lodging the First Information Report during night itself. It is also difficult to accept that the parties who had suffered bereavement would have cared so much of such reason inasmuch as, it is also an accepted fact that the person does not carry any valuables to the Police Station to lodge an F.I.R. as may invite any risk of attack by dacoits etc. The primary concern and anxiety to

reach the Police Station to seek help may dictate the conduct more than other factor.

25. Third, even if it is accepted, there was some element of fear of dacoits as may have prevented the first informant from lodging the F.I.R. promptly, absolutely no reason may exist to explain the delay in morning hours. To that extent, it is admitted to Shivram Singh (P.W.-3) that the sun broke at 5 a.m. The Police Station being barely 2 Km. from the place of occurrence, it may have taken hardly 15 minutes to 20 minutes to travel to the police station by the informant side. For the foregoing reasons, we are not convinced that the F.I.R. was lodged promptly. Therefore, we have looked at the prosecution evidence more carefully.

26. Coming to the presence of the three witnesses of fact - Raghuveer Singh (P.W.-1), Habib (P.W.-2) and Shivram Singh (P.W.-3), they had separate residences. While the deceased was the real brother of Shivram Singh (P.W.-3), the latter is not the first informant. He also does not claim that he went out in search of the deceased, alone. The presence of Habib (P.W.-2) is founded on the premise that he went to the shop of Raghuveer Singh (P.W.-1) and his brother Tejveer Singh (not examined) to buy kerosene oil at 9:00 p.m. in the night. Just as the prosecution would like the Court to believe Mainpuri was dacoity affected areas and therefore, there may have been some fear experienced by the prosecution witnesses, in travelling to the Police Station in the night hours, equally, it is safe to assume that in the year 1983, 9:00 p.m. was a very late hour, for simple villagers. The village shop etc. would not open beyond sunset. In fact, that time would be well past the dinner time when villagers normally went off to sleep.

27. In any case, not relying on that factor but keeping the same in the mind as part of natural routine followed by villagers those days, the claim that those three persons went in the search of the deceased is founded on nothing but the self-serving statements. Absolutely no evidence was led to establish that the deceased had gone out at 6:30 p.m., to treat the son of Chandra Pal. Neither that patient nor his father Chandra Pal were examined at the trial, to establish the foundation of the prosecution story that the deceased had gone out of his house at 6:30 p.m. i.e. around sunset time, for such urgent work. Further, during his cross-examination, Raghuveer Singh (P.W.-1) could not establish if the deceased ever issued any prescription for treatment of any person. Therefore, the fact that he was a qualified medical doctor was also not established.

28. What is more remarkable and difficult to accept is, the entire prosecution story of three witnesses reaching the crime scene at the exact time when the

offence was enacted, as if they were running with clock work precision knowing what time the occurrence would be caused. Assuming that the prosecution story is true that the deceased had gone out of his house around sunset time to a place barely 1.5 to 2 kms., though, he did not return for close to two an half hour, the witnesses felt the need to go in his search around 9:00 p.m. only and not earlier as enabled them to reach the exact spot, just in time, to view the occurrence.

29. First, the deceased was about 30 years of age, and not a young child. The witnesses claimed, they suddenly felt the need to search for him. If he was a medical doctor, attending to such medical urgencies and patients may have been a routine, specially in villages that lack proper / structured / institutional medical services. Even then, the witnesses did not state that they made contact with Chandra Pal. Therefore, the witnesses suddenly decided to go and search the deceased, is itself doubtful. Though Raghuveer Singh (P.W.-1) and Shivram Singh (P.W.-3) may have felt a common concern to search the deceased, Habib (P.W.-2) who was a tailor and who had gone to Raghuveer Singh (P.W.-1) to buy kerosene oil, also decided to accompany the other witnesses, for no rhyme or reason.

30. What emerges thereafter is even more remarkable. The three witnesses reached near the elevated railway line running across the river Arind. Their view was obstructed by the railway line elevated 8 to 10 feet. They heard a cry /cries from the other side of that railway track that they thought were of the deceased. They ran up the railway track and from there in a torch-light and under moon light, saw Kunwar Pal and Raj Bahadur were holding the deceased by his hands and legs while Vishwanath Singh was sitting across his chest, ready to cause the (single) stab injury to his neck. By very nature, the occurrence would have taken barely few seconds to complete. The positioning of the witnesses at that exact time / moment, at a place far away from their house/s and in the middle of agricultural fields, is purely co-incidental. Besides the doubt being expressed as to the source of light, what is more difficult to accept is having randomly started 2 ½ and 3 hours after the deceased had left his house, the witnesses reached the exact place of occurrence at the exact time when the occurrence was being caused.

31. What lends strength to the doubt is that the prosecution witnesses consistently narrate - out of three assailants only one was armed with a knife whereas the three witnesses were armed with wooden-staff / lathi. It is nearly impossible to believe that Shivram Singh (P.W.-3) who is the real brother of the deceased and Raghuveer Singh (P.W.-1) who is cousin and even Habib (P.W.-2) who was worried enough to go in search of the

deceased, made no serious attempt to either stop the occurrence or apprehend the assailants. It may have been another situation if the assailants were armed with deadly weapons such as firearms or they were far outnumbered the appellants.

32. Seen in that light, we are unable to accept beyond reasonable doubt, the prosecution story as narrated. In the first place, the presence of three eye witnesses is under serious doubt and second their narration of the occurrence itself is not free from doubt. The defence theory finds corroboration - first through medical evidence which clearly indicates that the occurrence was caused by a double edged weapon such as a spear. The doctor clarified that that single injury may not have been caused with a single edged weapon. To the extent there is absolutely no recovery of the murder weapon and there are no recoveries of blood stained clothes etc. of the appellants, the doubts being raised cannot be brushed aside.

33. Second, corroboration of the defence theory also exists with respect to lack of motive. To the extent we cannot ignore that the deceased had stood surety to Ganga Singh, the father of Vishwanath Singh in the same police case that has been cited to support the theory of motive, the book The MODI's Text Book of Medical Jurisprudence And Toxicology, 19th edition an authoritative text book on the subject of medical jurisprudence considers the range of a torch as were commonly available at that time. We note, at page 61 of the said text in paragraph 2 under the heading "18 Miscellaneous Methods of Identification" it has been observed as below :-

"2. According to Tidy, the best known person cannot be recognized in the clearest moonlight beyond a distance of seventeen yards. Colonel Bary, I.M.S., is of opinion that at distances greater than 12 yards the stature or outline of the figure alone is available as a means of identification. To define the features even at shorter distance is piratically impossible by moonlight."

34. Thus, we find, none of the prosecution witnesses of fact is wholly reliable. At best, they are chance witnesses with very doubtful presence. Their narration is uncorroborated. Also, the motive cited by them was not established. Inherent improbability of that motive exists as the deceased stood surety to the father of Vishwanath Singh. Absolutely, no corroboration exists. Their conduct and source of light are also wholly doubtful. Thus, the prosecution story has not been proven beyond reasonable doubt.

35. Consequently, this appeal succeeds and is **allowed**. The judgement and order of conviction dated 08.08.1984 passed by Sri O.P. Jain, learned IVth

Additional District & Sessions Judge, Mainpuri, in Sessions Trial No. 394 of 1983 (State vs. Kunwar Pal, Vishwanath Singh and Raj Bahadur) under Section 302 I.P.C. against the appellant Vishwanath Singh and under Section 302 read with Section 34 I.P.C. against the appellants Kunwar Pal Singh and Raj Bahadur is hereby set aside on a benefit of doubt. Appellants, namely, Vishwanath, Kunwar Pal Singh and Raj Bahadur are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged. However, the appellants are directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

36. A copy of this judgment alongwith the trial court record be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.

(Tej Pratap Tiwari,J.) (Saumitra Dayal Singh,J.)

September 10, 2025
Manoj