



2025:AHC:161277-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
GOVERNMENT APPEAL No. - 206 of 1989

State

.....Appellant

Versus

Jagdish

.....Respondent

Counsel for Appellant	: A.G.A., Gaytri Rajput
Counsel for Respondent(s)	: J.K. Sengar, Chandan Sharma, Indra Pal Singh Rajpoot, J.S. Sengar, Piyush, Rajendra Kumar Singh

Court No. - 46

HON'BLE RAJIV GUPTA, J.
HON'BLE HARVIR SINGH, J.

(Delivered by Hon'ble Harvir Singh, J.)

1. Heard Sri A.N. Mulla, learned A.G.A. for the State/appellant, Sri Indra Pal Singh, learned counsel for the surviving accused-respondents and perused the record.
2. This appeal, under Section 378 (3) Cr.P.C. at the behest of the State, has been preferred against the judgment and order dated 19.8.1988, passed by the learned Additional Sessions Judge-IV, Jalaun at Orai, in Session Trial No. 25 of 1084 (*State vs. Jagdish and others*), whereby learned trial Judge acquitted accused persons of all the charges.
3. Brief facts of this case are that, a First Information Report was lodged by the complainant Shiv Das with the allegations that on

18.12.2003, when he alongwith his brother Gayasi and father Gokul was inside his cattle shade, at about 10:00 A.M. the cattles belonging to accused started eating fodder, Gayasi thereupon asked Hanuman to whom the cattle belonged and keep them tied, so that they may not eat the fodder of their animals. Hanuman felt bad and saying that you have so courage, went towards his house. Subsequently, all the accused persons namely, Hanuman, Udaibhan and Santram armed with *lathi-danda*, Govind Das, Prithvi Raj and Daya Shankar armed with firearm, Jagdish armed with axe and Mahavir armed with spear (*'ballam'*) arrived there and started exhorting the complainant and others, thereafter Govind Das and Prithvi Raj with intention to kill the complainant and others had fired upon them, which hit Gayasi, he ran out and fell down on the ground. Daya Shankar had shot fired upon Gokul, as a result of which, he sustained injury on his stomach and fell down. Hanuman assaulted Gokul with *lathi*. After hearing the alarm raised by the complainant, Kishori, Shyam Lal and some other residents of the village reached at the spot and on the exhortation of the aforesaid persons, the accused persons ran away towards their houses. Thereafter Shiv Das went to the police station for lodging of the first information report, which was written by Brindaban and the same was handed over to the police. The injured Gokul and others also went to the police station with the complainant. The case was registered at the police station and the injured Gokul was taken to the Primary Health Centre, Khadrauna for his medical examination, from where he was referred to District Hospital, Orai. The investigation of the case was entrusted to S.I. Arjun Singh Tomar, who reached at the place of occurrence and collected preliminary evidence with regard to the incident and prepared the inquest report and sent the dead body of the deceased for postmortem. On the next day, the site plan was prepared, thereafter, the Investigating Officer after completion of investigation, submitted chargesheet against the accused persons, before the Magistrate.

4. The case being triable exclusively by the Court of Sessions, was committed to the Court of Sessions by the competent Magistrate for trial. Learned Trial Judge framed charges under Sections 147, 148, 149, 302 and 307 of Indian Penal Code, 1860 (in brevity 'IPC'). Accused persons denied charges and claimed to be tried.

5. In order to prove its case, the prosecution has produced the following witnesses, namely:-

1	Shiv Das	PW-1
2	Gokul	PW-2
3	Brindavan	PW-3
4	Dr. G.C. Mishra	PW-4
5	Dr. M.K. Jain	PW-5
6	Suresh Prakash	PW-6
7	Arjun Singh Tomar	PW-7

6. In support of the ocular version of the witnesses, following documentary evidence was produced and contents were proved by leading the evidence;

1	F.I.R.	Ex.Ka.6
2	Injury Report	Ex.Ka.4
3	Postmortem Report	Ex.Ka.3
4	General Diary	Ex. Ka.6
5	Chik Report	Ex.Ka.2

7. After completion of prosecution evidence, statements of accused persons were recorded under Section 313 Cr.P.C., in which they denied the evidence and stated that false evidence has been led against them. No other witness was examined in defence, the accused persons adduced defence and examined Dr. S.C.L. Sharma, Pathologist as DW-1. The accused have also filed certified copies of two judgements, Ist being a

judgment of S.T. No. 363/68 (State vs. Sheo Pal and others), under Section 302 I.P.C. and the other one is the judgment of Case No. 305/82 (State vs. Gayasi), under Section 25 Arms Act, P.S. Kadaura, District-Jalaun. A statement under Section 164 Cr.P.C. purported to be that of Gokul has also been proved by defence as Ext. Ka.8.

8. PW-1 Sheo Das has corroborated the case of the prosecution as set up in the first information report. He has however, stated that Govind Das and Prithvi Raj had opened fire and the shot, which was fired by the Govind Das hit his brother Gayasi. He has also deposed that when his father went to rescue his son Gayasi, the accused Daya Shankar fired at him, as a result of which he sustained injury and fell down on the ground. Thereafter, accused Hanuman and Mahavir had assaulted his father with *lathi* and *ballam* respectively. He also deposed that except him, Kishori, Shyam Lal and his mother had also seen the incident. After committing the crime, the accused persons fled away towards village. When the accused persons ran away from the scene of occurrence, he went towards Gayasi and found him dead. He further deposed that on his dictation, Brindawan has scribed the first information report, which was proved by the witnesses, thereafter he along with his father, Brindawan, Ramlal and Chhavilal had gone to police station for lodging of the F.I.R. His father was medically examined at Kadaura. After seeing the deteriorated condition of his father, the doctor referred him to Orai, Hospital. Brindawan was also accompanied with his father. He also deposed that prior to the said incident, the election of Gram Pradhan has taken place in his village, in which Chavilal and Brindawan had contested. At the time of incident his father wore the shirt, which was sent by him to police station and its fard was prepared there. The witnesses also identified the shirt of the deceased. PW-1 in his cross examination has deposed that Mansharam was his grandfather. Mansharam was having three sons namely, Gokul, Prabhu and Babu. Gokul was his father. He also deposed that, whether his uncle Prabhu is the witness or not he does not know. He also deposed that his grandfather was having one sibling, whose name was

Girdhari. Jalim is the son of Girdhari and Jalim had a son namely, Ramlal, who was also a witness in this case. Brindawan is the brother of Vasudev. Brindawan is the son of Parma. Gyasi is the elder brother of Shivdas. Gayasi was unmarried. It is incorrect to say that, on the date of incident Gayasi did slept at the 'Gher'. Accused Daya Shankar and Mahavir lived together. Udaibhan, Jagdish, Santram and Prithviraj were living separately. He also deposed that on the date of occurrence, the Rabi foodgrains were found there, which belonged to Bhujwal, Ambika Prasad, Babu and Mahipal. Plugging work was going on.

9. PW-2 Gokul has also corroborated the case of the prosecution and deposed that, at the very time when Gayasi had sustained injury, he was present at the spot and collecting Kantar. Govind Das fired on him and subsequently, Daya alias Daya Shankar also shot fire on his stomach. Thereafter, Hanuman and Mahavir assaulted him with *lathi* and *ballam* respectively, as a result of which, he became unconscious. He also deposed that, this incident was witnessed by Kishori and Shyam Lal. He also deposed that Kishori had not dared to come forward to get his statement recorded, as he was threatened by the accused persons. He further deposed that Gayasi has died due to gunshot injury. PW-2 in his cross examination has deposed that the witness Shyamlal is his nephew. Kishori is the native of his village. Accused persons had threatened Kishori and opened fired upon him just before Makar Sankranti and in this regard his son Shivdas had made a complaint before the police. He further deposed that, at the time of occurrence he was present at the spot. Shivdas was not present there, he was in the '*Khalihan*'. When the scuffle took place, he reached at the compound (Vayare). He deposed that Shivdas reached soon before the spot, when he received gunshot. Gayasi had also sustained gunshot injury. He further deposed that, when Gayasi received gunshot he was collecting '*kante*'. He, in his cross examination has also deposed that there was swelling in his both the eyes. His statement was recorded by the Investigating Officer after about four days of the incident in the hospital at Orai, when he regained. Consciousness it is incorrect to say that at the time of inspection he was

fully conscious. He heard in fainted state that his son has died. He, in his cross-examination has deposed that, it is incorrect to say that accused Hanuman, Mahavir, Udaybhan, Jagdish and Santram had not assaulted the deceased with *lathi*, *ballam* and *kulhari* in the presence of his father and brother. Witness himself told that Mahavir, Hanuman and Dayashankar had assaulted his father and accused Govind Das opened fire at his brother. He also deposed that he did not tell the Investigating Officer that, all the accused persons after chasing his father and brother started assaulting them with lathi, ballam and kulhari. He does not know, how the Investigating Officer has mentioned the said fact. He also deposed that soon after scuffle, he raised alarm. After receiving the gunshot injury, his brother moved 6-7 steps and fell down on the ground. After falling down of his brother, his father ran towards him and sustained gunshot injury. He also deposed that when he intervened, Daya opened fire at him, which hit his stomach and he fell down, then accused Hanuman and Mahavir assaulted him with lathi and bhala respectively.

10. PW-3 Brindaban, who is the scribe of the F.I.R. has deposed that on the dictation of Shiv Das at about 11:00 or 11:30 A.M. in village-Chatel, which is nearly 7-8 kilometers from his village the F.I.R. was written. He further deposed that from Kadaura he went to District Hospital, Orai along with injured Gokul and on the next day at about 8:00 A.M. he returned back. He further deposed that, at that time the relatives of Gokul also reached at Orai. He further deposed that, it is incorrect to say that the first information report was either lodged in the night of 18.12.183 or in the next morning. He also deposed that it is incorrect to say that on account of being friend of Shiv Das, I am giving wrong testimony.

11. PW-4 Dr. G. C. Mishra has performed Post mortem examination of the dead body of Gayasi. According to him, he performed autopsy on 19-12-83 at about 1.30 P.M. Deceased was nearly 35 years of age and almost one day has passed to his death. Rigor mortis was present all over

the body, Eyes and mouth were closed. He found the following anti-mortem injuries:-

(1) Five fire-arm wound entry in an arse of 14 cm x 3cm 12 cm below inferior angle of scapula, 10cm above and posterior to front superior illiac spine on left side of back, No tatooing, charring etc. present.

(ii) Scabbed abrasion 2cm x1.5cm on lower part of left side of back 5cm above and posterior to left superior illiac spine and 4cm below injury no.1.

(iii) Two fire-arm exit wound 3cm x 1cm (above) and 2cm x1 cm (below) in an area of 6cm x2cm on upper part right side of chest, 6cm above and lateral to right nipple and anterior axillary fold and margins everted.

On internal examination, he found that 10th and 11th of ribs on left posterior side were fractured, Pleura was damaged at the side of injuries. According to him death was caused due to shock and haemorrhage, as a result of injury no.1 and 3 .He has proved post mortem report Ext,Ka-3. According to him injury no. 2 would have been caused by friction of some hard object and also due to fall.

12. PW-5 Dr. M.K. Jain has examined injuries of Gokul on 18-12-83 at about 2.30 P.M. He found the following injuries on his person:-

(i) Complain of pain on the right parietal region of the head.

No sign was present.

(ii) An abrasion of size 2.5cm x1 cm fresh, transversely just below the Xiphisterinum, 8cm above the habtices

(iii) A punctured wound of 0.3cm in xx diameter on the midline 4cm above the unblicus, blood is continuously oozing.

(iv) A coma shaped punctured wound on the right mid axxillary line of size 0..7cm x 0.2cm. Fresh blood is oozing.

No scorching or tattooing was present. All injuries were fresh. Injury no.3 and 4 could have been caused by some pointed weapon or with fire arm, X-ray was advised to determine the weapon. Injury no.2 was simple

and could have been caused in a friction by some hard object. He has proved injury report Ext Ka-4.

13. PW-6 Constable Suresh Prakash is a formal witness. He has filed an affidavit to the effect that on 18-12-83, he took sealed dead body of deceased Gayasi from the place of occurrence in village Basrehi and brought it duly sealed for post mortem examination at Urai.

14. PW-7 SI Arjun Singh Tomar has proved, chik report Ext. Ka-2 and its entry in General Diary being Ext.Ka-6. As already pointed out, he took up investigation the same day. He has proved memos, that he has prepared during investigation, site plan and charge-sheet.

15. Learned Additional Government Advocate has submitted that the finding of acquittal recorded by the learned trial Judge is against the evidence on record and vitiated by misreading of oral as well as documentary evidence. He further submitted that the prosecution has opted not to examine any other witness of fact, except complainant and the injured, who happened to be son and father respectively. According to the first information report, the said incident was witnessed by Kishori son of Prasuram and Shyam Lal son of Prabhu Dayal, mother of the complainant and some other villagers. Shyam Lal and Ram Lal happens to be the members of the same family and consequently it would have been a futile exercise to add numbers of witnesses in the case. He further submitted that during pendency of this case, witness Ram Lal and his father Jalim Singh were done to death, for which a case was registered at Police Station Kadaura. He also submitted that the accused persons have threatened one of the witness Kishori and consequently he has not dared to come forward to depose against them out of fear, hence the prosecution has no option left, but to examine only these witnesses, i.e. PW-1 Sheodas and PW-2 Gokul. It is true that the absence of independent testimony, where it could have been adduced by the prosecution makes the situation a little difficult, but at the same time it can not be said, that the evidence of persons, who have seen the incident respectively. He further submitted that all the prosecution witnesses had supported the prosecution case as spelt out in the first information report

but the learned trial Judge disbelieved their testimony on extraneous material, while coming to the conclusion that the prosecution had failed to prove the charge against the accused-respondents.

16. Learned A.G.A. for the appellant State has further submitted that the judgment passed by the learned trial court is illegal, arbitrary and without appreciation of credible evidence against the accused persons. The acquittal of the accused, rendered by the judgment is not based on correct appreciation of evidence, as much as the learned trial court failed to appreciate the evidence in depth and in letter and spirit.

17. On the other hand, learned counsel appearing on behalf of the respondent has argued that the judgement and order passed by the learned trial court is in accordance with law. The learned trial court has very consciously appreciated the evidence on record and has considered the corroborated testimony of the witnesses and other documentary evidence on record such as, the first information report, medical report etc. and thereafter has reached to just and fair conclusion, acquitting the accused persons. He further argued that there were three witnesses, who witnessed the incident. However, only two witnesses namely, Shiv Das and Gokul were examined as PW-1 and PW-2, and another witness, who was reportedly present at the place of occurrence and at the time of incident namely, Kishori was not examined on behalf of the prosecution. He further submitted that, as far as another person witness Kishori is concerned, he was not a family member of the deceased and therefore, an independent witness would have given a fair and impartial picture of the incident, as he was present there. He also submitted that, PW-1, Shiv Das stated that the fire was opened by the Govind Das and Prithviraj and the fire opened by Govind Das did hit his deceased brother Gayasi, but did not name that Daya Shankar opened fire at his deceased brother. At the same time PW-1 in his cross examination has deposed that Govind Das and Daya Shankar have opened fire at his deceased brother, but did not name Prithviraj, hence the testimony of PW-1 and PW-2 is disbelievable to that extent and for the reason that, there is no consistency and coherence in the statements of two witnesses, i.e. PW-1

and PW-2. He further submitted that prosecution witnesses have stated that PW-1 was not present on the spot at the time of incident and appeared later on and has simply narrated the story on some hearsay evidence. He also submitted that PW-2 Gokul stated that Mahavir, Hanuman and Daya Shankar assaulted him, whereas PW-1 Shiv Das stated that Hanuman and Mahavir assaulted his father with *lathi* and *ballam* respectively. PW-1 further stated that when his father intervened, Daya Shankar opened fire at him.

18. Learned counsel for the respondent further argued that PW-1 Shiv Das is the brother and PW-2 Gokul is the father of the deceased Gayasi and therefore, they are the interested witnesses and a distant relative, namely Kishori would have been an independent witness, was not examined. He further submitted that from the testimony of eye witnesses PW-1 and PW-2, it is clear, that there are material contradictions in the statements of PW-1 and PW-2 and no other witness was examined during trial, therefore, the findings of acquittal arrived at by learned trial court are in accordance with law and based upon correct appreciation of evidence. He further submitted that, so far as the medical report is concerned, the injury caused to the deceased Gayasi have been found to be caused by firearm, but the cause of death was shown to be shock and haemorrhage, but not certainly shot by the firearm. The injuries caused to Gokul (PW-2) were not related to the gunshot injury, but stated that injury Nos. 3 and 4 would have been caused by some pointed weapon or firearm, therefore, it is not clear, as to whether the injury Nos. 3 and 4 were caused by a pointed weapon or firearm. Thus, the statement of PW-2 that, Daya Shankar was also shot fired on his stomach, becomes irrelevant. Learned counsel for the respondent has relied upon the judgements of the Hon'ble Supreme Court in the case of *Vijay Singh @ Vijay Kr. Sharma vs. State of Bihar*, 2024 INSC 759, *Dhirubhai Bhailalbai Chauhan vs. The State of Gujarat*, 2025 INSC 381, *Raja Khan vs. State of Chhattisgarh*, 2025 INSC 167, *M. Sambasiva Rao vs. The State of Andhra Pradesh*, 2025 INSC 868 and *Ramu Appa Mahapatra vs. State of Maharashtra*, 2025 INSC 147 and

argued that, if there are material contradictions in the testimony of witnesses and no independent witness has been examined, then the same stands fatal to the case of prosecution and therefore, the accused persons are entitled for such benefit of doubt. He lastly argued that, there is no infirmity, illegality or impropriety in the impugned judgement passed by learned trial court and the same is based upon correct appreciation of evidence, facts etc. and calls for no interference by this Court.

19. We have perused the depositions of prosecution witnesses, documentary evidence and the judgment and order impugned. Learned Sessions Judge has threadbare discussed the evidence and very categorically came to the conclusion that the accused / opposite party is not guilty of the offences, for which they were being tried.

20. In view of above, we are of the considered opinion that learned trial court has rightly appreciated the evidence on record, the evidence produced by the prosecution does not inspire confidence, as held by learned trial court. We also do not find any infirmity in the impugned judgment and order of the Trial Court and we concur with the aforesaid judgment and appeal is liable to be dismissed.

20. Accordingly, the appeal sans merit and is *dismissed*.

21. The trial court record be sent back to the concerned court.

(Harvir Singh, J.)

(Rajiv Gupta, J.)

September 11, 2025

Faridul