

Neutral Citation No. - 2025:AHC:119328-DB

Court No. - 44

Case :- CRIMINAL APPEAL No. - 2661 of 1984

Appellant :- Ram Ashrey Singh

Respondent :- State of U.P.

Counsel for Appellant :- P.N.Mishra,Rahul Misra

Counsel for Respondent :- A.G.A.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Madan Pal Singh,J.

1. Heard Sri Rahul Mishra, learned counsel for the appellant; Sri Vikas Goswami, learned A.G.A. for the State and perused the lower court record.

2. The present appeal arises from the judgment and order dated 12.09.1984 passed by Sri S.L. Adarsh, IInd Additional Sessions Judge Azamgarh in Sessions Trial No. 210 of 1983 (State of U.P. Vs. Kunwar Singh & Ors.) arising out of Case Crime No. 95 of 1982, Police Station – Maharajganj, District- Azamgarh, whereby the learned trial court has acquitted the accused persons, namely, Kunwar Singh and Ameer Singh of the charges levelled against those accused under Section 302/34 IPC. However, arising out of the same evidence, the learned trial court has convicted the present applicant- Ram Ashrey Singh for the offence under Section 302/34 and sentenced him for life.

3. Short submission advanced by learned counsel for the appellant is, once the learned trial court disbelieved the evidence led by Bhukhan Singh, (P.W.-2) and acquitted the two accused persons, namely, Kunwar Singh and Ameer Singh after elaborately considering the ocular evidence led by Jhinak Singh (P.W.-1) (the other eye witness), and after due consideration of all other evidence led by prosecution including the evidence led by Dr. B. Das (P.W.-4) with respect to the ante-mortem injuries suffered by the deceased Satyendra Singh, the presumption of innocence ought to have been confirmed against the appellant as well.

4. No point or differentiation was established by the prosecution and no other evidence was led by the prosecution as may have allowed the learned trial court to reach mutually contradictory conclusions, one of guilt against the present appellant and the other of innocence against the other two co-accused persons.

5. It may be noted that the accused person Kunwar Singh is the real brother of Jhinak Singh (P.W.-1) and Hari Shanker Singh. Both Jhinak Singh (P.W.1) and Hari Shanker Singh were issue less. The accused Kunwar Singh had eight sons including Ameer Singh, Ram Ashrey Singh both accused in this case, Satyendra Singh (the deceased), and five others.

6. According to the prosecution story, on 30.10.1982, the three accused persons Kunwar Singh, Ameer Singh and Ram Ashray Singh assaulted the deceased Satyendra Singh in the agricultural field of Jhinak Singh (P.W.-1) at about 8:30 a.m. In that assault, the accused Kunwar Singh assaulted his son Satyendra Singh with a '*Gadasa*'. The second accused Ameer Singh assaulted his brother with a spade/'*Fawda*' and the present appellant assaulted his brother Satyendra Singh with a sickle/'*Hasiya*'. The occurrence was witnessed both by Jhinak Singh (P.W.-1) and Bhukhan Singh (P.W.-2) whose agricultural field was located nearby.

7. Upon a Written Report submitted by Jhinak Singh (P.W.-1), the FIR was registered at Police Station-Maharajganj, District-Azamgarh on the same day at about 10:30 a.m. The Written Report thus submitted has been proven as Ex. Ka-1 at the trial while the FIR was proven as Ex. Ka-2 at the trial.

8. On 30.10.1982 itself, the Investigating Officer, Sri M.A. Khan (P.W.-3 at the trial) recovered a lower body cloth, upper body cloth, a wooden staff/'*Paina*' and also a piece of broken sickle. All articles thus recovered articles were described to be blood stained. That Recovery

Memo is Ex .Ka-11 at the trial.

9. Also on 30.10.1982, the said Investigating Officer recovered blood stained and plain earth from the place of occurrence. That Recovery Memo is Ex. Ka-12 at the trial.

10. Further on 30.10.1982, itself, another recovery was made of a spade/‘*Fawda*’ from near the place where the dead body of the deceased was found. That Recovery Memo has been proven as Ex. Ka-13 at the trial.

11. Also, Inquest Report was prepared on 30.10.1982, which is Ex. Ka-4 at the trial.

12. On 31.10.1982, Dr. B Das conducted the autopsy examination on the dead body of the deceased. He noted the following ante-mortem injuries:-

“1. Incised wound 16 cm x 3 cm x 3 cm over right side neck, major vessels are cut, transversely placed, 2 cm below ear lobule.

2. Incised wound 8 cm x 5 cm over right side neck 1 cm below injury no.1.

3. Incised wound 15 cm x 2 cm x 2 cm over right side neck 2 cm below injury no.2. All major vessels are cut.

4. Incised wound 4 cm x 2 cm x 2 cm over front of left wrist, transversely placed.

5. Traumatic amputation of left index finger at first I.P. joint. Distal segment is attached. Skin tag edges are clean out.

6. Abrasion 2 cm x 1.5 cm over front of right leg lower 1/3rd.

7. Incised wound 14 cm x 3 cm x 3 cm over back on right side in scapular region.”

13. Thereafter, on 03.11.1982, a ‘*Gadasa*’ measuring about 11 fingers long and about three fingers wide was recovered allegedly at the pointing out by the accused Kunwar Singh. That Recovery Memo is Ex. Ka-15 at the trial. Also, on 03.11.1982, a blood stained shirt and undergarment/(*Banyan*) of the accused Ram Ashery were recovered from

his person. That Recovery Memo is Ex. Ka-17 at the trial. Further, on 3.11.1982, a blood stained '*Bandi*' was recovered from the person of the accused Kunwar Singh. That Recovery Memo is Ex. Ka-18 at the trial.

14. The above recovered items were sent for serological examination to the Forensic Science Laboratory, Agra. Vide its report dated 18.2.1984, it has confirmed the presence of human blood on the piece of clothing recovered from near the dead body of the deceased as also on the wooden staff/ '*Paina*' recovered. Further traces of human blood were confirmed on the piece of a sickle/ '*Hasiya*' recovered from near the place of occurrence as also on the '*Gadasa*' recovered at the pointing out by Kunwar Singh.

15. Upon completion of the investigation, charge-sheet was submitted by the Investigating Officer which led to the framing of following charges against all the accused persons:-

"स्थाना ग्राम भीलमपुर थाना महाराजगंज जिला आजमगढ़ में दिनांक 30-10-82 को करीब 8.30 बजे सुबह आप लोगों ने सामान्य आशय को अग्रसर करने में श्री सतेन्द्र सिंह को जब कि वह खेत में हल चला रहे थे, गड़ासा, फावड़ा व हसिया द्वारा मृत्यु कारित करके हत्या की और इसके द्वारा आप लोगों ने ऐसा कार्य किया जो भारतीय दण्ड संहिता की धारा 302/34 के अधीन दण्डनीय अपराध है, और जिसका संज्ञान लेने की अधिकारिता इस न्यायालय को प्राप्त है।"

16. At the trial, besides the above documentary evidence, prosecution led oral evidence through five witnesses. Jhinak Singh (P.W.-1) and Bhukhan Singh (P.W.-2) were examined as fact witnesses. First, Jhinak Singh (P.W.-1) proved, he had two brothers namely Kunwar Singh (an accused in this case) and Hari Shanker Singh. He and Hari Shanker Singh were issue-less while Kunwar Singh had eight sons. The deceased Satyendra Singh s/o Kunwar Singh used to live with him and take care of him. He and his brother Hari Shanker Singh had sold some land to the deceased Satyendra Singh. Also, he had executed documents to transfer his remaining property in favour of deceased Satyendra Singh. For that reason, the accused persons bore animus. He also proved that there were three cases existing between the accused persons and the deceased

Satyendra Singh.

17. Next, he proved that the ancestral properties of the parties had been partitioned amongst between the brothers. Their agricultural fields lay near each other. He disclosed, the occurrence took place around 8:30 a.m. At that time, the deceased was tilling his agricultural field while the witness was cutting grass on his plot near a Babool tree. At that time all the accused persons arrived. Kunwar Singh was armed with a '*Gadasa*', Ameer Singh was armed with a *spade*/*'Fawda'* and Ram Ashrey was armed with sickle/*'Hasiya*' used to tap '*Tadi*'. First, they physically assaulted the deceased and threw him to the ground. They assaulted him with their weapons. Upon hearing the commotion, he alongwith Bhukhan (P.W.-2) reached the place alongwith others namely Bahadur, Gulab and Awadh Narayan Singh (none examined at the trial) . Other villagers also arrived at the scene. The accused fled. Thereafter, this witness proved that he dictated the Written Report to Bhagwat (not examined at the trial) and proved the Written Report as Ex. Ka-1 at the trial.

18. Next, Bhukhan Singh was examined as P.W. -2. He also proved the time of occurrence to be 8:30 a.m. Further, he claimed, upon hearing the commotion he and Jhinak Singh (P.W.-1) reached the place of occurrence and saw the assailants Kunwar Singh, Ameer Singh and Ram Ashrey Singh were assaulting the deceased Sateyndra Singh with a '*Gadasa*', a *spade*/*'Fawda'* and a sickle/*'Hasiya*'. He also maintained, Jang Bahadur, Bhukhan Singh, Awadh Narayan Singh, and Gulab Singh, also reached the place of occurrence. However, as noted above, those persons were not examined during trial.

19. Thereafter, the Investigating Officer. M.A. Khan was examined as P.W.-3. He proved the recoveries as also the other aspects of the investigation including the statements made to him by various witnesses.

20. Dr. B. Das was examined as P.W.4. He proved the ante-mortem

injuries and the cause of death. He also proved that the stomach was filled with undigested 'chawal and dal', and small intestine was half filled of gases.

21. Thereafter, Constable Dhruv Narayan Tiwari was examined as P.W.5. He proved the fact that the dead body of the deceased was transported for postmortem.

22. Thereafter, the statements of the accused persons were recorded under Section 313 Cr.P.C. Briefly, it may be noted that the appellant disputed the occurrence in entirety and attributed false allegations for other reasons.

23. In such evidence, the learned trial court disbelieved the prosecution story *qua* two accused persons, namely, Kunwar Singh, who was armed with a '*Gandasa*' and Ameer Singh, who was armed with a spade/'*Fawda*'. Yet, it has convicted the present appellant.

24. Submission of learned counsel for the appellants is, it never became open to the learned trial court to reach two conflicted conclusions, one in favour of the accused persons, Kunwar Singh and Ameer Singh Singh and another against the present appellant. Neither witnesses proved distinct roles played in the assault caused on the deceased.

25. Except for weapon assignment being different, no other distinction was established either by Jhinak Singh (P.W.1) or Bhukhan Singh (P.W.-2). Even if, the role of Ameer Singh is considered on a different footing, he being assigned role of assault with a spade/'*Fawda*', which injuries were completely not corroborated by medical opinion, no other point of distinction was established in the role assigned between the accused Kunwar Singh, who was armed with a '*Gadasa*' and who allegedly assaulted with that weapon, and the present appellant Ram Ashrey Singh who was allegedly armed with a sickle/'*Hasiya*'.

26. Referring to those weapon of assault assigned to Kunwar Singh and the present appellant, it has been disclosed that that no effort was made by the prosecution to establish that the injuries suffered by the deceased may not have been caused by a '*Gadasa*' assigned to Ram Ashrey. Both, weapons '*Gadasa*', described to be about 11 fingers long and four fingers wide as also sickle/'*Hasiya*' assigned to the present appellant may be described as medium length, sharp edged weapons that may cause similar injuries.

27. Unless the prosecution had led evidence to that effect and unless the learned trial court drawn distinction in the role assigned to Kunwar Singh, and the present appellant, based on that substantive evidence, it was not open to the learned trial court to draw two conflicted conclusions-one in favour of the accused and other against the accused. To the extent adverse conclusion has been drawn against the present appellant, on the same evidence, the order of the learned court below is perverse.

28. In that regard it has also been emphasized, while the '*Gadasa*' was allegedly recovered at the pointing out by the accused Kunwar Singh, the sickle/'*Hasiya*' assigned to the present appellant was not recovered. Only a piece of metal, described to be a broken part of such sickle/'*Hasiya*' may have been recovered from near the place of occurrence. That was never admitted to the appellant. That may never be evidence that the assault had been caused by the appellant with a sickle.

29. Reliance has been placed on **Joginder Singh and Others Vs. State of Punjab, 1994 SCC (Cri) 46 (Paragraph-3)**, **Ram Laxman Vs. State of Rajasthan, 2016 (12) SCC 389 (paragraphs 6 , 7 & 8)**, **Javed Shaukat Ali Qureshi Vs. State of Gujarat, 2023 (9) SCC 164 (Paragraph no.15)** **Ram Singh Vs. State of Uttar Pradesh, (2024) 4 SCC 208 (Paragraph nos. 36 to 38)**. It has been submitted that the learned court below has erred in convicting the present appellant, by applying dual standards while appraising the same set of evidence, led by the prosecution.

30. Second, it has been submitted, the learned trial court has discarded the testimony of Bhukhan Singh (P.W.2) as unreliable. Thus, the only evidence available with the Court is the evidence of Jhinak Singh (P.W.-1.) He is not a wholly reliable witness. Reference has been made to his cross-examination statement to establish that he was suffering from swelling on his feet for which reason he may never have been in a position to either be cutting grass on his agricultural field or to run to the place of occurrence as may have allowed him a realistic opportunity to witness the actual occurrence, as narrated by the prosecution. Reference has also been made to his age 60 years on the date of occurrence and further his compromised eye sight (proven at the trial). On his own account, he was sitting away from the place where the deceased was tilling the field. Also there were standing crops between the place where the witness claims to have been present and where occurrence was caused. That too many have prevented the witness, a clear view of the occurrence. Last, recoveries have been doubted.

31. On the other hand, learned AGA would submit, there is no error on part of the learned trial court. Insofar as the prosecution was able to establish that the occurrence has been caused by three accused persons with common intention who may have participated in the occurrence, together and it has concluded that the ante-mortem injuries suffered by the deceased may not have been caused with a spade/‘*Fawda*’ or a ‘*Gadasa*’, there is no error on part of learned court below. Dr. B. Das (P.W.4) had proved that the ante-mortem injuries may not be caused by spade/‘*Fawda*’ weapon of assault.

32. As to the evidence of Bhukhan Singh (P.W.-2), it has been vehemently urged that he was a wholly reliable witness. His deposition has been wrongly discarded solely because he could not name the person engaged by him to till his field. That fact was wholly irrelevant to the deposition made by him as to his presence.

33. Insofar as the injuries suffered by the deceased were duly proven through ocular evidence and insofar as those were duly corroborated by the medical opinion, it has been submitted that the order of conviction does not suffer from any infirmity.

34. Having heard learned counsel for the parties and having perused the record, in **Joginder Singh (Supra)** more than one accused were charged for causing ‘Gadasa’ injuries to the deceased. During the autopsy, one incised wound and eleven blunt weapon injuries were found. Two eye witnesses were examined by the prosecution. In such facts, the trial court convicted all six accused persons. On appeal, the High Court acquitted three of them on possibility of false implication.

35. Upon further appeal before the Supreme Court, it was observed as below :-

“3. The accused denied the offence and stated that they were falsely implicated. The prosecution case rested on the evidence of P.W. 3, the father of the deceased and P.W. 4 who claimed to be an eye-witness. The trial court convicted six of the accused persons, as already stated. The trial court considered their evidence and observed that the possibility of false implication of three of the convicted accused cannot be ruled out. Having stated so, the High Court acquitted three of the accused. At more than one place, the High Court pointed out that the false implication of the acquitted accused cannot be ruled out. Without further discussion, the High Court convicted the three Appellants solely on the ground that they had motive to attack. It may be mentioned that the evidence of P. Ws. 3 and 4 is to the effect that quite a few of the acquitted accused inflicted injuries with sharp-edged weapons. But their evidence is rejected in respect of other five accused solely on the ground that they could have been falsely implicated. In our view, the same reasoning applies to the case of the present Appellants also. If that be the position, the Appellants cannot be treated as a different category merely on the ground that they had motive and on that basis they could not have been convicted when the evidence of the eye-witnesses was found to be highly unsatisfactory. The High Court has committed an error in convicting the present Appellants having rejected the evidence of the eye-witnesses in respect of the other accused.”

(emphasis supplied)

36. In **Javed Shaukat Ali Quresi (Supra)** the Supreme Court made the

following pertinent observation with respect to impermissible inconsistency in an order of conviction and acquittal, on the same evidence led against all the accused persons :-

“15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike, and in such cases, the Court cannot make a distinction between the two accused, which will amount to discrimination.”

(emphasis supplied)

37. Then in **Ram Singh (Supra)**, recently, the Supreme Court had the occasion to consider that principle again. In that, relying on **Javed Shaukat Ali Quresi (Supra)** the Supreme Court made the following pertinent observation :-

“36. In such circumstances, it cannot be said that the prosecution could prove the accusation against the appellant beyond all reasonable doubt. As a matter of fact, on the same set of evidence, the trial court gave the benefit of doubt to the other accused Lala Ram primarily on the ground that there was a grudge between the accused and PW-1.

37. This Court in the case of Javed Shaukat Ali Qureshi, has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. This Court clarified as under:

“15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.”

38. Thus, on a careful analysis of the evidence on record, we are of the view that the appellant should be given the benefit of doubt as according to us, the prosecution could not prove his guilt beyond all reasonable doubt. Any lingering doubt about the involvement of an accused in the crime he is accused of committing, must weigh on the mind of the court and in such a situation, the benefit of doubt must be given to the accused. This is more so when the co-

accused is acquitted by the trial court on the same set of evidence.”

(emphasis supplied)

38. That being the principle of law to be applied, we have to ascertain if one or two distinct sets of evidence arose against the three accused persons. In that it cannot be disputed by the prosecution that the evidence led by the prosecution was only one. While the medical evidence may suggest that the ante-mortem injuries may have suggested that the injuries may not have been with a spade ‘*Fawda*’ but Dr. B. Das (P.W.-4) clearly proved that it was not possible to ascertain which injury (nos. 1,2,3,4,5 and 7) had been caused with which weapon (assigned to Kunwar Singh and Ram Ashery Sing), namely a ‘*Gadasa*’ and sickle/ ‘*Hasiya*’. He also suggested injury no. 6 may have been caused with a hard blunt object. In state of that evidence, it is not possible to appreciate and sustain the reasoning of the learned court below that the incised wounds (injury nos. 1,2,3,4,5 and 7) may not have been caused by a ‘*Gadasa*’. That finding is based on imagination and is not based on evidence received at the trial. No effort had been made by the prosecution to establish any specific injury caused by any of the accused persons. Hence, it is not possible to draw a distinction between the presence and role assigned to the accused Kunwar Singh and Ram Ashrey Singh.

39. No legal or justifiable reason exists to sustain the conviction of the present appellant while acquitting the other (Kunwar Singh). To do so would be to recognize and confirm inconsistency in judicial decision making. The presumption of innocence at the beginning of trial that operated in the favour of all three accused persons, was confirmed against two on the same set of evidence that was led against the present appellant also. To the extent the prosecution did not distinguish the role of the present appellant in the occurrence that of the acquitted accused, we find great difficulty in accepting the conflicted prosecution story that now remains to be considered. In short the conviction of the present appellant

cannot be sustained in view of the prosecution having allowed the order of acquittal against Kunwar Singh and Ameer Singh, to attain finality.

40. The motive based distinction drawn by the learned trial Court to acquit the accused persons Kunwar Singh and to convict the appellant, is impermissible in view of the law discussed above. Also by way of fact reasoning it is conflicted. If the reasoning of the learned trial Court to acquit the co-accused Kunwar Singh is accepted that no father would cause such an occurrence and kill his son as he had no reason to gain any property, it may be urged with equal conviction that a real brother would not kill his sibling for reason of such greed of property when according to the prosecution story itself, Jhinak Singh had sold part of his property to the deceased Shailesh and not through will/gift.

41. As to recovery, a piece of metal described as a fragment of a sickle/'*Hasiya*' was recovered. In absence of the whole sickle/'*Hasiya*' being recovered, the finding recorded by the learned trial Court that the injuries had been caused only by a sickle/'*Hasiya*' assigned to the present appellant, is presumptuous and not based on cogent evidence. We find ourselves unseen facts exist in that regard. It is difficult to ascertain the guilt of the appellant Ram Ashrey Singh on that recovery.

42. Also, we are mindful, Jhinak Singh (P.W.-1) was aged about 60 years. He was afflicted by an unproven disease that had caused his feet to swell. He also proved that had squint in his eyes. Further, he proved that earlier the deceased and the accused persons had some disputes but those came to be resolved through Ram Shankar. That had angered Munni a rich person of the village. He also proved that earlier the deceased had gone to Punjab for 15 days and returned with a woman with whom he had eloped but not married.

43. Insofar as the evidence led by Bhukhan Singh (P.W.-2) is concerned, the learned trial Court has disbelieved his presence. There is

no Government Appeal or Appeal filed by the victim/informant. Therefore, there is less occasion to consider the correctness of that finding. In any case, the said witness did not offer any different version of the occurrence than that offered by Jhinak Singh. To that extent, we further note, during his examination, he proved that at the time of the occurrence, he was present on his agricultural field which was about 200 yards from the place of occurrence. Also, there were standing crops on the agricultural fields in between. Being 70 years of age, it would have taken him time to reach the place of occurrence and with proven poor eye sight (distance) he would have been prevented from accurately observing the occurrence, as it unfolded. He also did not prove that he saw the occurrence from his agricultural field. He became aware about the occurrence at the call given by Jhinak Singh. Yet, he narrated that all the accused persons assaulted the deceased. No role or weapon assignment was made in the context of weapon used to cause the injury suffered by the deceased. Further, during his cross examination, various suggestions were thrown at him that he was making a false statement to the Court because the co-accused Kunwar Singh had led evidence against him in other cases. According to him, the occurrence had got over in one minute. For the reasons noted above, clearly he would have taken time to walk 200 meters, to reach the place of the occurrence as may have allowed him an opportunity to be an eye witness to the actual assault.

44. As to the recovery of blood stained clothes, those were recovered on 03.11.1982 i.e. well after the occurrence. Yet, according to the prosecution, the appellants were wearing the same blood stained clothes for days after the occurrence. No serological/forensic report exists to support the prosecution story that those were stained with human blood. Therefore, that corroborative evidence is also not of unimpeachable quality. In any case, on similar evidence, accused namely Kunwar Singh had been acquitted by the learned court below. Therefore, no undue reliance may be placed on that piece of evidence, either.

45. In view of the above reasons, the present appeal is **allowed** on a benefit of doubt as arose in favor of the co-accused Kunwar Singh. Consequently, the impugned order is set aside. The appellant-Ram Ashrey Singh/ Ramashrey Singh is acquitted. The appellant is on bail. His bail bonds are cancelled and sureties discharged. He need not surrender, in case, he is not wanted in any other case. The appellant is directed to furnish bail bond in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned within two months from today.

46. Copy of this judgment alongwith original record of Court below 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.

Order Date :- 8.7.2025

Akbar

(Madan Pal Singh,J.)

(Saumitra Dayal Singh,J.)