

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1702 OF 2008

Rajendra Singh ... Appellant

Versus

State of Uttaranchal ... Respondent

JUDGMENT

Aftab Alam, J.

1. This appeal is directed against the judgment and order dated April 30, 2008 passed by the Uttarakhand High Court in Government Appeal No.1174 of 2001 (Old No.303 of 1991). By the impugned judgment, the High Court allowed the Government Appeal, set aside the judgment of acquittal rendered by the trial court, and finding the appellant guilty of the offence of murder convicted him under section 302 of the Penal Code and gave him the sentence of rigorous imprisonment for life.

2. The case of the prosecution is based on a written report dated July 26, 1988 submitted at Police Station Dehradun by one Vijay Singh s/o Puran Singh Rana (hereinafter referred to as “the informant”). In the written report

it was stated that the informant's elder brother, namely, Kishan Singh Rana (the deceased) was a peon in the Bank of India, Rajpur Road Branch, Dehradun. He had given a pair of pants and some cloth for stitching to Rajendra Singh tailor (the appellant), whose shop is on the road just near their house. The appellant did not return the stitched clothes even after several days and on the evening prior to the date of occurrence, there was a quarrel between the informant's brother and the appellant on that issue. On July 26, 1988 (the date of occurrence) the informant's brother had gone to the bank as usual on his motor cycle. He returned from the bank at about 1.00 p.m. and as he reached in front of the appellant's shop, he got down from the motor cycle as the road was broken at that point. At that instant, the appellant came out of his shop carrying a pair of scissors in his hands; hurling abuses, he came down to the road and attacked the informant's brother with the scissors with the intent to kill him. In order to save his life, Kishan Singh Rana ran down the road but the appellant chased him and caught him after some distance in front of Chintamani's house. At that spot he gave the informant's brother many blows by the scissors, one after the other. Kishan Singh Rana fell down bleeding on the road. It was further stated in the written report that besides the informant, Makhan Singh (PW.2), Laxman (Motor) Auto Mechanic (not examined) and his sister-in-

law, Deepa (the wife of the deceased – PW.3) and many other persons and women of the area witnessed the occurrence. After assaulting the deceased, the appellant fled away from there. It was further stated in the written report that Makhan Singh took the informant's brother to Dun Hospital, where he was declared brought dead. The written report concluded with the request to take legal action against the appellant.

3. The written report submitted by Vijay Singh was incorporated in the first information report (report No.230) giving rise to criminal case No.483/88/-under section 302 IPC, P.S. Dehradun.

4. The police after investigation submitted charge-sheet and the appellant was put on trial on the charge under section 302 of the Penal Code.

5. In support of the charge, the prosecution examined 11 witnesses. PW.1, PW.2 and PW.3 are the eye witnesses of the occurrence, of whom PW.1 is also the first informant. PW.4 is one of the witnesses of the recovery of blood stained and plain earth and a chappal from the place of occurrence. He also identified his signature on the site plan (Ex.Ka-3) of the place of occurrence. PW.5 is another witness of the recovery of blood stained and plain earth, two chappals and one sandle from the place of occurrence. He identified his signature on the seizure memo (Ex.La-3). PW.6 and PW.7 are

witnesses of the recovery of the scissors from the appellant's shop. PW.8 is the doctor who had conducted post-mortem on the body of the deceased. PW.9 is a formal witness, the scribe of the *chik* FIR. PW.10 is a Sub-Inspector of Police who had examined the place of occurrence and had seized the articles from there. PW.11 is the Investigating Officer of the case.

6. The trial court found that there were a number of discrepancies in the depositions of the eye-witnesses and held that the prosecution was not able to establish the charge against the appellant. It, accordingly, acquitted the appellant by the judgment and order dated November 16, 1990.

7. The State Government filed an appeal against the judgment of the trial court and the High Court took the view that the reasons given by the trial court for not accepting the statements of PW.2 and PW.3 were specious and quite untenable. The High Court found that both PW.2 and PW.3 are wholly reliable witnesses and there was no reason not to accept their evidences. It, accordingly, set aside the judgment passed by the trial court and convicted and sentenced the appellant, as noted above.

8. The appellant is now in appeal before this Court.

9. Before proceeding to examine the ocular evidence adduced by the prosecution in support of its case, we may first see the medical evidence. As noted above, PW.8 conducted the post mortem on the body of Kishan Singh Rana on July 27, 1987. He found as many as 16 injuries on the body of the deceased which are as under:-

“1. Stab wound 2.5 cm x 1 cm x cavity deep on left side of chest, 9 cm below left nipple midline direction backward and medially.

2. Stab wound 1.5 cm x .5 cm x muscle deep on left side of abdomen, 8 cm below injury No.1 and 11 cm away from the umbilicus.

3. Stab wound 4 cm x 1.5 cm x cavity deep on left side of abdomen direction medially backward and downward.

4. Contusion 6 cm x 4 cm on back of left elbow and arm.

5. Contusion 22 cm x 3 cm on right arm extending from right shoulder up to elbow (front aspect).

6. Lacerated wound 2 cm x 1 cm on right side of forehead x scalp deep, 6 cm above outer angle of right eye.

7. Stab wound 3 cm x 1 cm x cavity deep on right side of chest lower part on ant axillary line 12 cm below right nipple going upward medially and backward, 12 cm below right nipple.

8. Stab wound 2.5 cm x 1 cm x cavity deep on right side of chest in post axillary line 6 cm behind injury No.7.

9. Stab wound 3 cm x 1.5 cm on back of right side x cavity deep going downwards backwards 7 cm below injury No.8.

10. Stab wound 2 cm x 1 cm on right buttock x muscle deep 15 cm below injury No.9 and 5 cm away from vert. column.

11. Stab wound 1.5 cm x .5 cm x cavity deep on right side of back, 5 cm away from injury No.9 direction medially and forward.

12. Stab wound 2.5 cm x 1 cm on right side of back x cavity deep, 6 cm above injury No.11 direction medially and forward.

13. Stab wound 3 cm x 1.5 cm on right side of chest x cavity deep over right back, 10 cm away from injury No.12 over the inferior angle of scapula direction forward, medially and downwards, 10 cm above injury No.12.

14. Stab wound 2.5 cm x 1 cm on right side of back of chest 8 cm above injury No.13 and 15 cm away from midline over the upper part of scapula. Direction backward, medially and upward.

15. Stab wound 1.5 cm x .5 cm x cavity deep 5 cm away from vert. column and 8 cm away from injury No.14.

16. Stab wound 3 cm x 1.5 cm x chest cavity deep on left side of lower chest back going downward forward and medially 4 cms away from midline, at L2 level.”

10. Here, it may be noted that apart from injuries 4 and 5 which are contusions that may have been caused due to fall, the rest 14 are stab injuries. The medical evidence is, thus, quite consistent with the prosecution case that the deceased was killed by inflicting injuries by a pair of scissors.

11. Let us now come to the ocular evidence.

12. The informant Vijay Singh who is the younger brother of the deceased was examined as PW.1. In his examination-in-chief he fully supported the prosecution case but in course of cross-examination in paragraph 12 of his deposition he stated as under:-

“..... On the day of occurrence I had gone to school. I had come back from school at 2.30 P.M. when I came back then I was informed that my brother was killed. People were weeping in the house. Then I had gone to hospital. Scissor blow was not given in my presence.”

13. It is for the reason of this statement that the trial court discarded the evidence of PW.1.

14. It is difficult to fault the trial court for rejecting the evidence of PW.1 but let us now see the evidences of PW.2 and PW.3.

15. It is undeniable that both PW.2 and PW.3 fully supported the prosecution case in regard to the assault by the appellant on the deceased with a pair of scissors. PW.3, the wife of the deceased also deposed before the court regarding the genesis of the occurrence i.e., the quarrel between the deceased and the appellant that had taken place on the evening before the date of occurrence over the appellant's failure to return the clothes given by the deceased for stitching even after a number of days. Further, the

deposition of PW.3 in regard to the assault by the appellant on the deceased is quite graphic.

16. The trial court, however, highlighted certain discrepancies between the statements of PW.2 and PW.3 and for that reason found them to be unreliable. Those very discrepancies were emphasized by the counsel for the appellant to urge before this Court that the judgment of the trial court was quite sound and the High Court was in error in reversing that judgment and holding the appellant guilty of the charge.

17. In order to appreciate the view taken by the trial court and the submissions made on behalf of the appellant in its support we may advert to the depositions of PW.2 and PW.3.

18. PW.2 Makhan Singh stated before the court that at the time of the occurrence he was not a tenant of the deceased. He further said that he had not said to *Darogaji* that he was a tenant in the house of Kishan Singh and he did not know how he (*Darogaji*) had so written in his statement. He further stated that in those days he was not working in any factory and he had not said that he was working in a factory. He had given (the No.) 119/3 as his address. That house belonged to the deceased. He was a resident of Tehri Garhwal and the deceased too was a resident of Tehri Garhwal. They thus, belonged to the same place. They also belonged to the same caste. He

knew Kishan Singh and Rajendra Singh from before. He also said that he had no relationship with Kishan Singh.

19. PW.2 was recalled for further evidence. On recall he reiterated that he had no relationship with the deceased Kishan Singh. He was then shown an application that was marked as Exhibit Ka-10 and he admitted that it was written in his hand and it was given at the Drona Hotel. In that application it was stated that his "*Chachera Bhai*" (paternal cousin), Kishan Singh had met with a tragic accident and for that reason he was unable to report for duty from July 26 to July 30, 1988. He further stated that he had given the number of the house of Kishan Singh because the place where he stayed had no number.

20. PW.3, the wife of the deceased denied before the court that Makhan Singh lived in their house as a tenant. She further said that Makhan Singh lived in Indra Colony and she did not know Makhan Singh before the occurrence. She further said that she had seen him first when the occurrence took place and she came to know his name when it was said to her by the police. The police had come to her house at 5.00 to 6.00 P.M. She did not remember whether or not Makhan Singh was with them at that time.

21. The Investigating Officer was examined as PW.11. No question was asked to him with reference to any statement of Makhan Singh recorded

under section 161 of the Code of Criminal Procedure. He, too, was recalled for further evidence and on recall he said that Makhan Singh addressed Deepa-PW.3 as “*Bhabhi*”.

22. In the statement of the appellant recorded under section 313 of the Code of Criminal procedure, the court put to him the following question:-

“It has come in the statement of Shri Naresh Pal Yadav, SI PW.11 that Makhan Singh had called Deepa as “*Bhabhi*”. What do you have to say in this regard?

Ans.: She is real *Bhabhi* (sister-in-law). Witness Makhan Singh lives with his *Bhabhi*.”

23. The depositions of PW.2 and PW.3 are discussed by the trial court in paragraph 13 of its judgment where it made the following observations:

“Now, there remains the testimony of Makhan Singh Rana (PW.2) and Smt. Deepa PW.3. Makhan Singh Rana (PW.2) tried to conceal the relationship between him and the deceased. Makhan Singh PW.2 stated that he had no relationship with Kishan Singh, deceased. He further stated that he was not the tenant of Kishan Singh. He further stated that he had not told the Investigating Officer that he was the tenant of Kishan Singh in that house, but the Investigation Officer stated in his statement that Makhan Singh told that he was the tenant and he gave the address of his house 119/3 Nai Basti. Naresh Pal Yadav, SHO PW.11 stated that Makhan Singh told Deepa as his *Bhabhi*. Makhan PW.2 stated in his re-examination that he had written in the application Ex. KA-10 Kishan Singh as cousin brother. He stated that this fact was written in the application wrongly, but he has not stated the reasons why this fact was written in the application wrongly. Moreover, Ghanshyam Das DW.2 stated that the application for Ration-Card of Makhan Singh was on the address of 119/3 Nai Basti, Chukhuwala.

Smt. Deepa PW3 also stated in his (sic. her) cross-examination that Makhan Singh was not the cousin of her husband. She stated in her cross-examination that she did not know Makhan Singh before the incident. When this accident took place she knew the name of Makhan Singh. The police personnel told the name of Makhan Singh, then she knew the name of Makhan Singh. Thus both the witnesses Makhan Singh PW2 and Smt. Deepa PW3 are intentionally concealing their relationship. It is highly strange that Smt. Deepa does not know the name of her husband's cousin.”

24. The above quoted passage from the trial court judgment suffers from some errors of fact. We have perused the evidence of PW.11 more than once but we failed to notice any statement in his deposition that Makhan Singh had given his address as house No.119/3, Nai Basti and had told him that he was a tenant of the deceased. As a matter of fact, it was PW.2, Makhan Singh himself who truthfully accepted that in his statement before the Investigating Officer he had given his address as No. 119/3 which was the house of Kishan Singh, the deceased. In his statement on recall he had also explained that he had given the address of the house of the deceased because the place where he lived had no clearly ascertainable address. Moreover, both he and the deceased came from the same place and belonged to the same caste and he knew the deceased from before. He repeatedly denied that he lived in the house of the deceased as a tenant and there is no reason not to accept his statement.

25. Further, calling Deepa as “Bhabhi” does not at all mean that Makhan Singh was a blood relation of Kishan Singh Rana. “Bhabhi” is a common form of address for the wife of someone who is known from before. Moreover, Makhan Singh had clearly said that both he and Kishan Singh Rana belonged to Tehri Garhwal and they were also of the same caste and further that he knew Kishan Singh Rana from before. In those circumstances, to call the wife of the deceased as “Bhabhi” was quite natural for him but at the same time it did not, by any means, show that he had any blood relationship with the deceased.

26. Coming now to Ex.Ka-10, it needs to be noted that that was an application for leave of absence given where he was working. It is a common failing to try to justify the unsanctioned absence from work by making out excuses and by taking some liberty with actual facts. Therefore, in his application for condoning the absence for four days, if he said that his cousin had met with a tragic accident, it cannot be inferred that the deceased was actually his cousin and in court he was trying to conceal the relationship.

27. We see no reason for the trial court to come to the conclusion that PW.2 and PW.3 were speaking falsely and were trying to hide the

relationship between PW.2 and the deceased or that he lived in the house of the deceased as a tenant.

28. In the first place no such inference is possible on the basis of the depositions of PW.2 and PW.3 and secondly and more importantly even if it is assumed for the sake of argument that the depositions of PW.2 and PW.3 were incorrect in regard to the relationship between PW.2 and the deceased and in regard to PW.2 living in the house of the deceased as a tenant at the time of occurrence, we fail to see how that can be the ground to reject their deposition entirely even though it is perfectly sound in respect of the main prosecution case. In our system of law, the maxim *falsus in uno, falsus in omnibus* is not followed.

29. Here, it is to be stated that the learned counsel appearing for the appellant submitted that the deposition of PW.3 was quite unreliable as it contained certain statements that were either incorrect or quite inconceivable. He referred to paragraph 20 of the deposition of PW.3 where she said that the first fight (between her husband and the appellant) took place on the verandah of the shop; that blood also spilled on the verandah of the shop and further that the first fight on the verandah of the shop went on for about 10-15 minutes. He also referred to paragraph 21 of the deposition of PW.3 where she said that the accused held the scissors with both hands

and opened both the handles of the scissors and then attacked with one hand at her husband.

30. Learned counsel submitted that there was no verandah in front of the shop of the appellant and the manner of assault as described by PW.3 was quite inconceivable.

31. We are unable to accept the submission that on the basis of the statements pointed out by the counsel the deposition of PW.3 is liable to be rejected. The statements relied upon by the counsel were made by PW.3 under the stress of cross-examination. She is a housewife and apparently not highly educated. She has a limited vocabulary and an imperfect capacity to describe the manner of assault on her husband. Her statement especially in paragraph 21 is obviously in answer to some convoluted question by the cross-examiner, to which she replied as best as she could.

32. We find the testimonies of PW.2 and PW.3 wholly reliable and see no reason not to accept the same.

33. Apart from the evidences of PW.2 and PW.3, there are other circumstances that lend credence to the prosecution case.

34. The Investigating Officer (PW.11) stated that he arrested the appellant at 8.00 p.m. on July 28, 1988. In course of interrogation he volunteered to produce the scissors used for killing the deceased from his shop. He took

the Investigating Officer to his shop, opened it with the keys kept in his pocket and recovered the blood stained scissors from under the shop counter and produced it before the Investigating Officer.

35. PW.6 stated that on July 28, 1988, while he was going to the house of the deceased, he met the police people in Indira colony (the place where the occurrence took place). The appellant was also with them. The police people brought the appellant to his shop and got it opened and on the asking of the *Daroga*, the appellant picked up a pair of scissors from the counter of his shop and handed it to the police. A recovery memo was prepared and the signatures of the witness and one Bhim Singh were taken on the recovery memo.

36. On a careful consideration of the materials on record and the submissions made on behalf of the appellant and the State, we are of the view that the High Court has rightly rejected the view taken by the trial court as wholly untenable and has rightly accepted the evidences of PW.2 and PW.3 in order to bring home the guilt of the appellant.

37. In the light of the discussion above, we find no merit in the appeal. It is, accordingly, dismissed.

38. The bail bonds of the appellant are cancelled and he is directed to surrender within four weeks from today, failing which the trial court is

directed to take all possible measures to apprehend him to make him
undergo the remaining sentence.

.....J.
(Aftab Alam)

.....J.
(Ranjana Prakash Desai)

New Delhi
April 11, 2013.



JUDGMENT