Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1020 OF 2004

Sheo Shankar Singh .... Appellant

VERSUS

State of U.P. ....Respondent

CRIMINAL APPEAL NO.1021 OF 2004

Sarvajit Singh @ Sobhu .... Appellant

VERSUS

State of U.P. ....Respondent

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. These appeals arise out of the common judgment dated 26.09.2003, by the High Court of Allahabad in Criminal Appeal Nos.814 and 815 of 1981.

2. The appellant in Crl.A.No.814 of 1981 before the High Court is the appellant before this Court in Crl.A.No.1021 of 2004. The second appellant in Crl.A.No.815 of 1981 before the High Court is the appellant before this Court in Crl.A.No.1020 of 2004. The appellant in Crl.A.No.1020 of 2004, as well as one Harihar Singh

were tried in Sessions Trial No.164 of 1979 and the appellant in Crl.A.No.1021 of 2004, was tried in Sessions Trial No.228 of 1979. All the accused were charged for an offence under Section 302 read with Section 34 of I.P.C. The present appellant in Crl.A.No.1020 of 2004, as well as the appellant in Crl.A.No.1021 of 2004 were further charged for an offence under Section 379 of I.P.C. All the three accused were awarded life imprisonment for the charge under Section 302 read with Section 34 of I.P.C. and the present appellants in these two appeals were further awarded two years rigorous imprisonment for the charge under Section 379 of I.P.C. When Crl.A.No.815 of 1981 was pending before the High Court, the first appellant Harihar Singh expired and his appeal, therefore, stood abated as against him as per the order of the High Court dated 11.02.2002.

3. It is in the above stated background, as on date, the appeal relating to Sheo Shankar Singh, the appellant in Crl.A.No.1020 of 2004 and Sarvajit Singh @ Sobhu, appellant in Crl.A.No.1021 of 2004, only survive for consideration.

4. As the story of the prosecution goes, on 13.06.1979 at 3.30 p.m. at Badhwa Chau Muhanion Kachcha Road, by the side of the godown of the Irrigation Department near the hovel of Vinod, the deceased Lorik was travelling along with P.W.1 Rakesh Kumar his

son, in a motorcycle bearing No.UTH 1287 as a pillion rider. The accused Ranjit Singh along with his father Harihar Singh, his brother Sarvajit Singh @ Sobhu and cousin Sheo Shankar Singh alleged to have pounced upon P.W.1 Rakesh Kumar and the deceased Lorik and stopped their motorcycle by catching hold of its carrier. While P.W.1 attempted to drive fast, the accused Harihar Singh exhorted his associates to kill the deceased, whereupon, Ranjit Singh is stated to have fired a shot and the same hit the deceased Lorik on his back. After receiving the injuries, the deceased Lorik stated to have jumped from the motorcycle and ran away shouting for help. As the deceased Lorik jumped from the motorcycle, P.W.1 Rakesh Kumar lost his balance, fell down and got his leg injured. Ranjit Singh armed with a revolver and the remaining three accused with country made pistols, stated to have attacked the deceased Lorik by firing at him with their weapons and on receiving the injuries, Lorik fell down a few paces ahead and when Ranjit Singh fired again, the deceased is stated to have succumbed to the injuries instantaneously. Thereafter, Ranjit Singh and the appellants stated to have fled away from the scene of occurrence in the motorcycle belonging to P.W.1 Rakesh Kumar while Harihar Singh stated to have ran away from the scene of occurrence.

5. On hearing the hue and cry, Ramjit (PW3) and Shyam Raj, uncles of P.W.1 Rakesh Kumar and one Sheo Narain, who stated to have witnessed the incident, reached the spot. P.W.1 lodged the F.I.R. at Kotwali Police Station at 4.00 P.M., on the same day. The police registered a case in the General Diary and the same is marked as Exs.Ka12 and Ka13. The inquest report prepared by the Investigating Officer (P.W.7) was marked as Ex.Ka14. The site plan map was marked as Ex.Ka19. Dr.Virendra Srivastava at the District Hospital, Ghazipur conducted the autopsy on the body of the deceased on 14.06.1979 at 12.45 p.m. Blood stained clothes and earth was sent for Serologist opinion and the blood group was noted as 'B' as per Exs.Ka32 and Ka33.

6. P.Ws.1 and 3, Rakesh Kumar and Ramjit son and brother of the deceased, were examined as eyewitnesses. Dr.P.N.Tandon, Medical Officer at Ghazipur District Hospital, was examined as P.W.2. P.W.2 examined P.W.1 at 4.30 p.m. and the injury report was marked as Ex.Ka4. The postmortem report issued by P.W.4 Dr.Virendra Srivastava, was marked as Ex.Ka11. In the Section 313 questioning, while all the other accused pleaded not guilty and claimed to be falsely implicated on account of enmity, accused Sheo Shankar Singh contended that on the date of occurrence, he had gone to attend a marriage in the house of

D.W.1 Kanhaiya Singh at Singheri village, falling within the limits of Madganj Police Station, Ghazipur district.

7. Based on the evidence placed before the Trial Court, the Trial Court convicted the accused. Aggrieved over the same, they preferred appeals before the High Court in Crl.A.Nos.814 and 815 of 1981 and the High Court having dismissed the appeals, the appellants are before us.

8. We heard Mr.Mahavir Singh, learned senior counsel appearing for the appellant in Crl.A.No.1020 of 2004 and Mr.Nagendra Rai learned senior counsel appearing for the appellant in Crl.A.No.1021 of 2004. The State was represented by Mr.Vivek Vishnoi learned Standing Counsel for the State.

9. The sum and substance of the submissions made on behalf of the appellants was that the non-recovery of the weapons and the motorcycle disproves the case of the prosecution. The non-examination of the so-called other eyewitnesses whose statements were recorded under Section 161 of Cr.P.C., would belie the case of the prosecution. The non-consideration of the evidence of P.W.8 about the motorcycle, also vitiates the case of the prosecution. The serious discrepancies, such as non-mentioning of the crime number and name in the vital documents, as admitted by the Investigating Officer, create

serious doubt about the case put-forth by the prosecution. Since, admittedly the deceased Lorik was a history-sheeter and since no independent eyewitnesses were examined who were stated to be present at the time of occurrence, it will have to be held that the prosecution roped in the appellants in a case of blind murder. Therefore, it was contended for all the above discrepancies and the evidence of the prosecution, not been properly appreciated either by the Trial Court or by the High Court, the judgments impugned are liable to be set aside.

10. As against the above submissions, the learned Counsel appearing for the State would point out that none of the submissions made on behalf of the appellants merit consideration, inasmuch as, the Trial Court, as well as, the High Court have met each one of the submissions effectively, while rejecting those submissions.

11. The learned counsel appearing for the State also took us through the evidence of eyewitnesses P.Ws.1 and 3, the evidence of the Doctor P.W.2, the injuries sustained by P.W.1, as well as the deceased and submitted that in the case on hand, the case of the prosecution is supported by medical evidence as well and that, the motive for the crime has been substantially established by the prosecution. The learned State counsel, therefore, contended

that none of the submissions made by the learned senior counsel appearing for the appellants merited any consideration.

12. Having heard the learned senior counsel for the respective appellants, the counsel for the State and having perused the impugned judgments of the High Court, as well as that of the Trial Court and all other material papers, before considering the submissions made on behalf of the appellants, it will be necessary to refer to the motive for the crime, as well as the injuries found on the body of the deceased and P.W.1 for appreciating the submissions.

13. As far as the motive is concerned, according to the prosecution, one Raja of Ausanganj, a Zamindar, owned huge properties with whom one Mukhchand, father of the deceased Lorik, was employed as a gardener. On being satisfied with the services of the said Mukhchand, the Zamindar gave him a land for raising construction. Further as salary could not be paid to the said Mukhchand by the Zamindar, the Zamindar allowed him to segregate six bighas of land from the forest belonging to the Zamindar for cultivation. The said Mukhchand cleared off six bighas of land from the forest and stated to have started cultivating the same and after his death, his son one Basu, started working with the Zamindar. Since the price of the land increased

by metes and bounds, the Zamindar wanted to reclaim the land, which ended in a prolonged litigation and ultimately the deceased and his brother stated to have succeeded in retaining the land. Irked by the above result, the Zamindar who was nurturing a grievance stated to have set up the accused who were local gundas to get rid of the deceased, his brother and his family members from the lands. It is stated that the accused started intimidating the family members of the deceased, which gave rise to frequent confrontation among the accused party and the party of the deceased, who wanted to protect their property.

14. On 13.08.1974, the deceased along with his associates is stated to have assaulted the accused Harihar Singh and a criminal case was also lodged against him. It was in the above stated background, it is stated that the accused party headed by Harihar Singh, who were nurturing a long-standing grievance against the deceased, engineered a plot to eliminate him, which resulted in the ultimate murder of the deceased. The above fact was brought about in evidence through P.W.3 and the Courts below have noted that while cross-examining him, the said narration of facts relating to the motive could be ascertained.

15. Keeping the above factors in mind and the alleged crime committed by the appellants, when we deal with the submissions

of the learned senior counsel appearing for the appellants, according to the learned counsel, it was a case of blind murder since the deceased Lorik himself was a history-sheeter, which has come out in the evidence of P.W.7, the Investigating Officer himself and, therefore, the appellants and the other accused were conveniently roped in taking advantage of the earlier tussle as between the appellants and the deceased. According to the learned senior counsel, as per the evidence of the Investigating Officer himself, at the time of inspection of the place of occurrence, apart from P.Ws. 1 and 3, the statement of one Somraj and Shiv Narayan were recorded, but both of them were not produced before the Court. It was, therefore, contended that by examining the close relatives of the deceased alone and by not examining those independent witnesses, it will have to be held that the case of the prosecution was manipulated and that the reliance placed upon the so called eye witnesses viz., P.Ws. 1 and 3, should not have formed the basis for the ultimate conviction of the appellants.

16. In fact, the Trial Court, as well as the High Court have specifically dealt with this very contention. The Trial Court, while considering the said submission, has noted that according to the investigating officer, when he approached those other witnesses,

none of them were prepared to come and give evidence in the Court and that they were not even prepared to disclose their names and that having regard to the background of the accused party who were notorious criminals, none of them were prepared to risk their life and give evidence in the Court. The Trial Court has also noted that the crime committed by the appellants in shooting the deceased to death in the broad day light was so gruesome, there was a fear complex set in the minds of the people around that place and, therefore, mere non-examination of the other independent witnesses in the absence of any lacuna in the evidences of P.Ws.1 and 3, cannot be held to be disastrous to the case of the prosecution. The said view was fully approved by the High Court and, in our considered opinion, there is no reason to take a different view than what has been held by the Courts below. The said submission of the learned senior counsel, therefore, stands rejected.

17. It was then contended that the material evidence viz., the motorcycle in which the deceased is stated to have travelled as a pillion rider along with his son P.W.1, was not produced and that in that context, the evidence of P.W.8 was not properly appreciated by the Courts below.

18. When we refer to the evidence of P.W.8, we find that according to him, he was the original owner of the vehicle and that he sold the said vehicle to the deceased, which was supported by Exs.Ka29, Ka30 and Ka31. In the cross-examination, he stated that the vehicle was in the possession of the deceased for 10 to 12 days and that due to non-payment of the remaining amount, he took possession from the deceased and that ultimately he dismantled the vehicle and disposed it of in Kabarkhana.

19. The evidence of P.W.8, in so far as it related to the sale of the vehicle in favour of the deceased is concerned, the same is borne out by Exs.Ka29, Ka30 and Ka31. Ex.Ka29 is a receipt for Rs.6,000/-. Ex.Ka30 is delivery proof by way of information to the Regional Transport Officer and Ex.Ka31 is the transfer document. Therefore, going by the initial statements of P.W.8 and the above referred three documents, the fact was brought forth without any scope of contradiction that the vehicle was sold to the deceased Lorik. Insofar as the statement of P.W.8 that due to non-payment, he took back the vehicle is concerned, except his *ipse dixit*, there is nothing on record to support the said version. So far as non-production of the vehicle is concerned, even according to the prosecution, the vehicle was stealthily removed by the accused

after committing the crime of killing of the deceased. P.W.8 stated that the vehicle was dismantled and disposed of in Kabarkhana. Therefore, if the prosecution was not able to produce the vehicle for the above stated reasons, no fault can be found with the prosecution on that score. When it is brought out in evidence through P.W.1, as well as P.W.3 and the injury found on the body of P.W.1 as mentioned by the Doctor who examined him viz., P.W.2 that the injuries sustained by P.W.1 were due to his fall from a running motorcycle, we do not find any discrepancy in the evidence placed before the Court in that respect. Therefore, the said submission of the learned senior counsel also does not impress upon us to take a different view than what has been held by the Courts below.

20. As far as the plea made on behalf of the appellant in Crl.A.No.1020 of 2004 that he was not present at the time of the occurrence and that he was attending a wedding in the place of D.W.1 is concerned, we find that it was a desperate attempt made on behalf of the appellant by raising the plea of *alibi,* which was rightly rejected by the Courts below.

21. We have perused the evidence of D.W.1. We find that his evidence was not precise in its substance in order to rely upon the same for accepting the plea of alibi. According to D.W.1, his

daughter got married on 12.06.1979 and that the marriage party had arrived on 12.06.1979 and left his house on 14.06.1979. As far as the appellant in Crl.A.No.1020 of 2004 is concerned, according to D.W.1, though he was not related to him, his acquaintance was through his grandfather and his father and because of the said long standing friendship, the appellant stayed in his house at 12.30 hours on 13.06.1979 and left his house only by 5.00 P.M. on the said date. D.W.1 was tendered for examination on 03.03.1981 i.e., nearly 1½ years after the date of occurrence. In the cross examination, he admitted that nearly 400 people attended the wedding and that he is not in a position to state as to who came at what time and remained in the premises, where the wedding was held. He would further admit that from the village to which the appellant belonged viz., Ghazipur, except the appellant, nobody else were known to him. He also claimed that the appellant gifted Rs.51/- to his daughter, which was recorded in a sheet of paper. He is stated to have mentioned about the said fact to many others in his village.

22. When we considered the above version of D.W.1 in the absence of any proof of wedding taken place either by way of production of invitation card or the proof of registration of the marriage of his daughter with any statutory authority or any other

supporting evidence, it will be highly risky to rely upon such a feeble evidence in order to accept the plea of alibi to discharge the appellant from the alleged crime. It will have to be borne in mind that the eyewitnesses to the incident specifically made a mention about the presence of the appellant in Crl.A.No.1020 of 2004 and the overt act alleged against him in the matter of killing of the deceased. The appellant was closely related to the first accused and was stated to have been hand in glove in the elimination of the deceased. Having regard to the various missing links and lack of sufficient materials to support the version of D.W.1, the Trial Court rightly rejected the said defence plea on behalf of the appellant in Crl.A.No.1020 of 2004, which was also approved by the High Court in the impugned judgment. We are also fully convinced of the above conclusion and we are not inclined to disturb the same.

23. Submissions were made on behalf of the appellants that there were serious lacunae in the registration of the F.I.R. and its dispatch and, therefore, the Courts below should not have accepted the case of the prosecution.

24. When we perused the F.I.R. placed before us in the additional documents, we find that while the occurrence had taken place at 3.30 p.m. on 13.06.1979, the same was reported at 1600 hours on

the same date. The police station is hardly a mile away in the western direction of the place of occurrence. It is also noted in the F.I.R that after registration, it was dispatched from the police station on 14.06.1979.

25. The learned counsel appearing for the State brought to our notice that as far as the dispatch is concerned, even as per the column found in the F.I.R., only the date of dispatch is required to be noted and not the time, as compared to the date and time to be recorded as regards the reporting of the crime. Therefore, due to non-mentioning of the time of dispatch, no fault can be found as regards the registration of the F.I.R.

26. The trial Court has noted that while the prosecution claimed that the occurrence took place at 3.30 P.M., the medical records and the evidence of P.W.2 Dr.P.N.Tandon, discloses that P.W.1 was examined by him on the same day viz., 13.06.1979 at 4.30 P.M. The Doctor has noted that the injury was fresh and that it could have occurred within six-hour duration. The Doctor also specifically answered to a question put to him that the injury could have happened at 3.30 p.m. on that day. In the course of cross examination, when the Doctor was asked as to how he was so very definite as to the freshness of the injury, the Doctor explained by stating that the freshness of the swelling can be

known by the difference in the temperature at the spot of the swelling, as compared to the temperature in the rest of the portion of the body. The Doctor who is an independent witness/officer can have no inner reason to depose against the appellants. In the said circumstances, there can be no reason to doubt the registration of the F.I.R., as contended on behalf of the appellants. The said contention of the appellants also, therefore, do not merit any consideration.

27. On behalf of the appellants, it was also contended that going by the evidence of P.W.1, the deceased and P.W.1 started from their residence as directed by the deceased towards the place of occurrence and that P.W.1 was not aware for what purpose the deceased started from the house and was proceeding in that direction. The learned senior counsel contended that if in the said situation, the occurrence had taken place, there could have been no scope at all to invoke Section 34, as against the accused in Crl.A.No.1021 of 2004, against whom there was no specific overt act. In that context, the learned senior counsel contended that while it was specifically alleged that the first accused Harihar Singh and the other accused opened fire towards the deceased, there was no reference to the appellant in Crl.A.No.1021 of 2004 to state that he used the weapon to the effect that he fired at the

deceased. The learned senior counsel referred to the evidence of P.W.1, as well as P.W.3 and pointed out that while P.W.1 has stated that in the F.I.R., all the accused fired towards the deceased, P.W.3 made it clear that out of the four accused, two alone indulged in firing and that the appellant in Crl.No.1021 of 2004 viz., Sarvajit Singh did not involve himself in any such firing activity. The learned senior counsel, therefore, contended that when out of several persons, only one person opened firing, common intention cannot be held to have been made out. The learned senior counsel relied upon a decision of this Court in **Md. Rustam alias Rustam** vs. **The State of Bihar** reported in AIR 2003 SC 562 for that purpose.

28. Having perused the evidence of P.W.3, we find that he did not state that all the accused, including Sarvajit Singh made his brother Lorik to run, when Ranjit Singh was holding the revolver and the remaining three were holding country made pistols in their hands. He further stated that out of the four persons, two were firing viz., Ranjit Singh and Shiv Shankar Singh and on suffering the injuries the deceased fell down that while Ranjit Singh continued to fire and that where after the deceased died. After the above said firing and the death of the deceased, while Harihar Singh is stated to have proceeded towards South by foot,

the other three stated to have fled away in the motorcycle in which the deceased and P.W.1 travelled. Accepting the said version of P.W.3, we find that there was a specific statement made to the effect that the deceased was made to run by all the four accused who were holding weapons and all the four of them were firing towards the deceased. He would further state that while initially all the four were firing towards the deceased, subsequently two of them viz., Ranjit Singh and Shiv Shankar Singh, continued to fire towards the deceased and at the end, Ranjit Singh alone fired indiscriminately in order to ensure that the deceased succumbed to the injuries. Therefore, it is not as if P.W.3 has merely stated that except two of the accused, the others did not fire at the deceased. According to him, all the four accused opened fire towards the deceased, who started to run and after the initial firing, two of the accused continued to fire pursuant to which the deceased fell down and finally, Ranjit Singh ensured that the deceased lost his breath.

29. Therefore, invoking of Section 34 was fully made out and the submissions to the contrary cannot be countenanced. The decision relied upon by the learned senior counsel, therefore, does not in any way support the case of the appellants.

30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the F.I.R. copy to the jurisdiction Magistrate, violation of Section 157 of Cr.P.C. has crept in and thereby, the very registration of the F.I.R. becomes doubtful. The said submission will have to be rejected, in as much as the F.I.R. placed before the Court discloses that the same was reported at 4.00 p.m. on 13.06.1979 and was forwarded on the very next day viz., 14.06.1979. Further, a perusal of the impugned judgments of the High Court, as well as the Trial Court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 Cr.P.C. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the F.I.R. to the Magistrate by itself will not have any deteriorating effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained. In this context, we would like to refer to a recent decision of this Court in ***Sandeep*** *vs.* ***State of Uttar Pradesh*** reported in *(2012) 6 SCC 107* wherein the said position has been explained as under in paragraph Nos.62 and 63 :

> *"62. It was also feebly contended on behalf of the appellants that the express report was not*

forwarded to the Magistrate as stipulated under Section 157, Cr.P.C. instantaneously. According to learned counsel FIR which was initially registered on 17.11.2004 was given a number on 19.11.2004 as FIR No.116 of 2004 and it was altered on 20.11.2004 and was forwarded only on 25.11.2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh and Another v. State of Punjab wherein this Court has clearly held that (SCC p.645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the Court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in Pala Singh to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in Sarwan Singh & Ors. Vs. State of Punjab, Anil Rai Vs. State of Bihar and Aqeel Ahmad Vs. State of U.P."

31. Having regard to our above conclusions, we do not find any merit in these appeals. The appeals fail and the same are dismissed.

32. The appellants are on bail. The bail bonds stand cancelled and they shall be taken into custody forthwith to serve out the remaining part of sentence, if any.

.....J.
[Dr. B.S. Chauhan]

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

New Delhi;
July 02, 2013.