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Judgment Reserved on 30.01.2024

Judgment Delivered on 29.07.2024

Neutral Citation No. - 2024:AHC:121291-DB

Court No. 47

Case :- CRIMINAL APPEAL No. - 156 of 2004

Appellant :- Ramesh Yadav

Respondent :- State of U.P.

Counsel for Appellant :- Bharat Singh Pankaj, Harindra Prasad Pal, Ramakant Singh, Vineet Kumar Singh

Counsel for Respondent :- Govt. Advocate

AND

Case :- CRIMINAL APPEAL No. - 147 of 2004

Appellant :- Narendra Singh And Another

Respondent :- State Of U.P.

Counsel for Appellant :- H.N. Singh, B. Narayan Singh, C J Yadav, Sanjay Kumar Yadav, Vineet Kumar Singh

Counsel for Respondent :- A.G.A.

Hon'ble Rajiv Gupta, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

(Delivered by: Hon'ble Mohd. Azhar Husain Idrisi, J.)

1. We have heard Sri H.N. Singh, Advocate assisted by Sri Arvind Kumar Tiwari, learned counsel for the appellant as well as learned A.G.A. for the State in extenso and have been taken through the entire material on record.

2. The afore-captioned both appeals arise out of the judgment and order dated 17.12.2003, passed by the then Additional Sessions Judge/Fast Track Court No. 2, District Mau, in Sessions Trial No. 59 of 2002 (State Vs. Narendra Singh and others) convicting the accused/appellants Narendra Singh, u/s 302 I.P.C. and accused Dharmendra Singh and Ramesh Yadav, under Section 302 read with Section 34 IPC and sentenced accused Narendra Singh for R.I. for life and a fine of Rs.10,000/- with default clause and accused Dharmendra Singh and Ramesh Yadav, for life imprisonment, under Section 302 read with 34 with fine of Rs. 5,000/-, with default clause. Both these appeals are

pending since year 2004 since then about 20 years have lapsed. Therefore, for the sake of precision, brevity and convenience, both the appeals have been clubbed and heard together and are being decided by a common judgment and order.

3. Bereft of unnecessary details, prosecution case, as culled out from the first information report, is that on 07.12.2001 at about 21.15 hrs. the complainant-Ram Pukar Singh s/o Raj Kumar Singh r/o Village Mirzapur, police station ranipur District Mau, gave a tehrir (Ext Ka-1) at P.S. Ranipur, District Mau divulging therein that the house of Kapil Singh S/o Gorakh Singh is situate on the southern side of his house. A programme (Path) of Ramayan recital, was staged, on 7.12.2001 from 10 a.m. He and his younger brother-Vijay Bahadur Singh alias Aangnu had gone to listen Ramayan. In the evening at about 6.00 pm., his younger brother Vijay Bahadur Singh went to wash his hands and face at the hand-pipe (nal), installed at the door of Kapil Dev Singh. Seeing Vijay Bahadur alias Angnu alone at the hand pipe (nal), Narendra Singh s/o Shri Ram Singhasan Singh, Dharmendra Singh s/o Mangla Singh and Ramesh Yadav s/o Ramchandar Yadav, came from their houses and exhorted to kill him. Meanwhile, Narendra Singh fired at his younger brother by a country made pistol, the bullet hit him on the back of his head. Vijay Bahadur fell down on the hand-pipe (nal) and died at the spot. Vijay Bahadur had old enmity with these people and in past, had threatened to kill them. On hearing the sound of fire, he alongwith Panchanand Singh s/o of Rama Shanker Singh, and Shiv Murat Singh son of Chandra Bhusan, ran towards the hand-pipe (nal) and saw the accused persons running away from the spot, after killing Vijay Bahadur. They chased the miscreants, but they managed to run away.

4. On the basis of the abovestated scribe (Ext Ka-1) a Criminal Case Crime No. 275 of 2001 u/s 302 IPC against Narendra Singh, Dharmendra

Singh and Ramesh Yadav was registered at P.S. Ranipur, District Mau. Entries of the same were drawn in Kaimi G.D. (Ext Ka-7) and also in Chik FIR (Ext Ka-3). Initially, the investigation was entrusted to S.I. Yogendar Nath Singh (Pw-3).

5. On F.I.R. being launched, the investigation was set into motion. The Investigation Officer recorded the statements of several witnesses under Section 161 of Cr.P.C. collected blood stained and simple soil and other material from the spot. prepared site plan, and after appointing the witnesses, inquest of the corpse of the deceased Vijay Bahadur Singh, was conducted on 07.12.2001, at about 21:15 p.m. He also prepared the inquest report. In the opinion of witnesses (*panchan*) the death of the deceased was the result of fire arm injury. However in order to confirm the exact cause of death, they suggested to carry out autopsy of the corpse of the deceased.

6. Consequentially I.O., prepared letter of request for postmortem to C.M.O., photos lash and other relevant and necessary papers and after wrapping the dead body in a cloth, sealed it, prepared sample of seal and sent it to mortuary for postmortem through constable Ram Ji Yadav and Ram Briksh Prashad on 08.12.2001. The autopsy was conducted by Dr. Anand Kumar Srivastava (Pw-5) who prepared postmortem report (Ext Ka-8) in his own writing and signature wherein he opined that the cause of death of the deceased Vijay Bahadur Singh is instantaneous, due to ante-mortem Injury.

7. I.O. sent the material collected from the spot to FSL, Lucknow. After duly completing the investigation and other necessary formalities, I.O. submitted the charge-sheet against the accused appellants namely Narendra Singh, Dharmendra Singh and Ramesh Yadav under Sections 302/34 I.P.C in the court of Chief Judicial Magistrate, Mau , who took the cognizance of the case. Finding the case being exclusively triable by the

court of Sessions, Chief Judicial Magistrate, committed it to the court of Sessions Mau, on 19.03.2002 for trial. In the Court of sessions it was registered as Sessions Trial No. 59 of 2002 (State vs Narendra Singh and others) and in turn transferred it to court of Additional Sessions Judge / FTC Court No. 2, Mau for trial.

8. The learned trial Sessions Judge framed Charges against the accused/ appellant Narendra Singh u/s 302 I.P.C. and against accused/ appellant Dharmendra Singh and Ramesh Yadav u/s 302/34 IPC. The accused / appellants abjured the Charge, pleaded not guilty and claimed to be tried.

9. In order to bring the charge home, prosecution has examined, following witnesses of facts including the formal witnesses in in ocular evidence:-

| Sl no. | Name of the witnesses | PW Nos |
|--------|---|--------|
| 1 | Ram Pukar Singh (Informant) | PW1 |
| 2 | Panchanand Singh (witness) | PW2 |
| 3 | S.I. Yogendra Nath Singh, I- I.O. | PW3 |
| 4 | Subhash Varma, H.M | PW4 |
| 5 | Dr. Anand Kr Srivastava, (PMR) | PW5 |
| 6 | Vinod Kumar Tiwari II- I.O. | PW6 |
| 7 | C-Chandrabhan Pandey, Inquest conductor | PW7 |

10. To corroborate the oral evidence, prosecution also adduced following documentary evidence:-

| Sl. Nos. | Particulars | Ext. Nos. | Proved by |
|----------|----------------|-----------|-----------|
| i | ii | iii | iv |
| 1. | Tehrir | Ext. Ka-1 | PW-1 |
| 2. | Inquest report | Ext. Ka-2 | PW-4 |

| | | | |
|----|-------------------------------|-----------|------|
| 3. | Recovery memo Gas / Petro-max | Ext. Ka 3 | PW-3 |
| 4. | Sample of Fard | Ext. Ka-4 | PW-3 |
| 5. | Site Plan, C.D. | Ext. Ka-5 | PW-3 |
| 6. | Chik F.I.R. | Ext. Ka-6 | PW-4 |
| 7. | Carbon copy of G.D. | Ext. Ka-7 | PW-4 |
| 8. | Post Mortem Report | Ext. Ka-8 | PW-5 |
| 9. | Charge sheet | Ext. Ka-9 | PW-6 |

11. Prosecution has also produced FSL reports which is on record, as paper no. 70 Ka and 20 ka. Which has been refereed by P.W.-6 S.H.O. Vinod Kumar Tiwari in his deposition.

12. Prosecution has also exhibited material evidence as under:-

| Sl. No | Particulars | Ext. Nos. | Proved by |
|--------|---|-----------|-----------|
| i | ii | iii | iv |
| 1. | Bullet recovered from the dead body during PM | Ext.-1 | P.W.-6 |
| 2. | Plain earth | Ext.-2 | P.W.- 6 |
| 3. | Wrapper clothe | Ext.-3 | P.W. -6 |
| 4. | Blood stained earth | Ext.-4 | P.W.-6 |

13. After completion of the prosecution evidence accused were examined 313 Cr.P.C. who denied the statement of the prosecution witnesses and stated that they are false. He further stated that they are implicated on account of political and otherwise personal enmity.

14. The accused appellant did not adduce any oral evidence in defence. However in documentary evidence they have filed copy of NCR 65 Kha, orders of the consolidation court being etc. 66 -Kha/1 to 66 Kha-3,

15. The learned trial court, after examining the entire material on record, testimony of the prosecution witnesses and also evaluating the oral and documentary evidence, came to the conclusion that there is a complete chain of evidence showing the complicity of the accused appellant in the commission of said crime and the prosecution has proved

its case beyond reasonable doubt, pointing towards the guilt against the accused persons and convicted accused under Section 302, 302/34 IPC and sentence accused Narendra Singh u/s 302 and sentenced to undergo R.I. for life and a fine of Rs. 10,000/- with default clause and accused Dharmendra Singh and Ramesh Yadav were sentenced u/s 302 read with 34 I.P.C. to undergo R.I. for life and fine of Rs.5,000/- each with default clause. Ld. counsel for the appellants assailed the conviction and sentence on various grounds and advanced several arguments in this behalf, which may be tested on the touchstone of the evidence adduced, undisputed facts and circumstances of the case.

16. In order to appreciate the submissions made by learned counsel for the appellant and learned A.G.A., it is imperative to discuss the evidence adduced by the prosecution.

17. PW-1 Ram Pukar Singh, is the complainant of the case, has deposed in his examination-in-chief that the house of Kapildev Singh is situated southwards adjoining to his house. On 07.12.2001, Ramayan recital programme (Ramayan Path) was going on at the house of Kapildev Singh since 10.00 a.m. Vijay Bahadur Singh alias Agnu Singh who is his younger brother, was also a participant in Ramayan Path. They reached in the programme at around 5:30 pm. It was 10 minutes less in 6 o'clock, when Vijay Bahadur went to hand-pipe (nal) located in front of house of Kapil Dev, for washing hands and face. Seeing him, Narendra Singh, Dharmendra Singh and Ramesh Yadav reached at the hand pipe (nal). Dharmendra and Narendra Singh were having country made pistol in their hands. Pointing towards Vijay Bahadur, Dharmendra Singh said to Narendra Singh that “यह वही है, इसे जान से मार डालो।” At this Narendra Singh fired with country made pistol at Vijay Bahadur hitting him on his temporal region. He, Panchanand and Shivmurat Singh witnessed the incident. On account of gun-shot injury, Vijay Bahadur fell down and died

on the spot. The aforesaid witnesses chased the accused persons, but they managed their escape good and ran away towards the south. This incident took place at 6.00 pm. On the day of incident itself, he had given written report (tehrir) at police station in between 9-10 o'clock. Seeing the written report which is on the record, the witness stated that it is the tehrir which is in his hand writing and it bears his signature. He proved it as Ext. ka-1. The I.O. recorded his statement regarding the incident.

18. P.W.2 Panchanand Singh reiterating the statement of the P.W.-1, and further deposed that the Ramayan Path was going on since 10 o'clock in the morning. He reached in the programme at about 05:00 PM. At that time gas was lighting and bonfire was illuminating at the west of the Kapildev's house and he sat there. Rampukar Singh, Shivmurat and his relatives, as well as three-four other villagers were present there. Agnu Singh alias Vijay Bahadur Singh who was also present there, was washing his hands at the hand pipe (nal) at about 6 o'clock. At that time, Narendra Singh, Dharmendra Singh and Ramesh Yadav, suddenly emerged there from south and surrounded Vijay Bahadur Singh. Ramesh Yadav and Dharmendra Singh challenged to kill Vijay Bahadur Singh. At this Narendra Singh fired with the country made pistol at the temporal region of Vijay Bahadur Singh, from the west. Thereafter these people ran away from west towards south, Dharmendra Singh, brandishing pistol, stating that if anyone comes forward, he too will be killed. Vijay Bahadur fell down near hand-pipe (nal) and was screaming "aaye aaye". After about 15-20 minutes, he died on the spot. On the next day at 6.00 O'clock in the morning, Investigating Officer reached at the place of occurrence.

19. Prosecution witness Panchanand further stated that Inquest proceedings of the dead body of Vijya Bahadur Singh was conducted in the presence of I.O., who appointed the witnesses. Inquest report (Ext. ka-2) was prepared, which bears signature of I.O. and Panchan Lal Bihari

Yadav, Kedar Yadav, Vijay Shankar alias Bablu and Manoj. The witness identified his signatures on inquest report. He further stated that his statement was recorded after 20 days of the incident by the Police at his home. He proved inquest report as Ext. Ka- 2.

20. P.W-3 Yogendra Nath Singh the I.O. has deposed that on 08.12.2001 he was posted as Sub Inspector at police station Ranipur. On that day, he started investigation of case crime no. 275 of 2001. He recorded the statement of complainant Rampukar Singh and gathered blood stained and plain earth from the spot, prepared recovery memo of the same and obtained signatures of witnesses on it. One gas was also taken into custody, which was lighting and spreading illumination, by which accused persons were recognized. Recovery memo of the same was prepared by him on the spot. Later Gas was handover into custody of Ravindra Singh. The recovery memo Ext Ka-3. for the same was also prepared, which is on record. He sealed the recovered items and prepared the samples seal. He proved it as Ext. ka-4. He further stated that he conducted the spot inspection, prepared site-plan and proved it as Ext. Ka-5. After that, hearsay evidences of Kapil Dev Singh, Ramdhari Singh and Ram Sakal Singh were recorded statement of witness Raj Kumar Singh and Hawaldar Yadav, Ravindra Singh were also recorded.

21. Prosecution witness, PW- 4 Subhash Verma, Head Constable, has averred in his examination that on 07.12.2001, he was posted as Head Moharir at police station Ranipur. On that day, on the basis of a tehrir of complainant Rampukar Singh, case crime no. 275 of 2001, under section 302 I.P.C. was registered against the accused persons Narendra Singh, Dharmendra Singh and Ramesh Yadav, at 9.15 PM. by him. Corresponding entry in G.D. report no. 31 at 21.15 pm on 07.12.2001 was written by him in his own hand writing and signature. He also prepared Carbon copy of the G.D., with original in the same process, which is on record. He also prepared chik FIR (Ext Ka-6). in his hand

writing bearing his signature Thus the witness proved Kaimi G.D. as Ext Ka-7 as Chik FIR Ext Ka-6.

22. PW-5 Dr. Anand Kumar Srivastav, has stated in his examination that on 08.12.2001, he was posted in District Hospital, Azamgarh as Cardiologist Surgeon. On that day, at 4.00 p.m. he conducted the post-mortem of the dead body of Vijay Bahadur Singh alias Agnu Singh, brought by constable C.P. No.-03 Ramji Yadav and C.No. 224 Rambraksh Prasad. In the course of post-mortem the autopsy surgeon notice following facts, mentioned in PMR.

- (i)- **External Examination:** According to doctor, the body of the deceased was of average height and built, eyes and mouth were closed. The blood ooze, behind the right ear, over the right side of the head, was clotted. Rigor mortis was present in his both hands and feet. Post-mortem staining was present on the back of the body. deceased was aged about 25 years and died about one day before the autopsy.
- (ii)- **Internal Examination:-** Right temporal bone fractured. Membrane of brain and brain lacerated. Brain was also ruptured. Base of skull fractured. Metallic bullet found therein of which one part was blunt. Left chamber of heart was empty. Right chamber was full. Weight-180 gram. Stomach Empty.
- (iii)- **Ante-mortem injuries:-**
Fire arm, wound of entry 1 cm x 1cm cavity deep on the right side of head 04 cm backwards from ear, margin of injury inverted. Blackening and charring present.
- (iv)- **Cause of Death:-**
The death of the deceased was instantaneous, due to ante-mortem injuries.

(v) **Recovery from corpse**

During the course of autopsy Dr. found a metallic bullet yellow in colour, whose head was blunt, which has been recovered from the body of the deceased. It was Sealed and forwarded to S.P. Mau.

PW-5 Dr. Anand Kumar Srivastava further stated that Post-mortem report (PMR) was prepared by him in his hand-writing and signature, which has been proved by him as Ext. ka-08. Dr. witness opined that the aforesaid injuries are likely to be caused by country made pistol on 07.12.2001 at 06:00 pm. These injuries are sufficient to cause death of any person.

23. PW-6 Vinod Kumar Tiwari has stated that on 12.12.2001 he was posted at police station- Ranipur as Station House Officer and was entrusted the investigation of Case Crime No. 275 of 2001 u/s 302 IPC from sub-inspector Y.N. Singh. After perusal of the record of investigation conducted by his predecessor, he copied post-mortem and inquest reports in C.D on 14.12.2001. On 16.12.2001, the accused persons surrendered in the court, regarding which information was entered in the case diary. Accused Narendra Singh did not surrender, against whom he obtained non-bailable warrant from the Chief Judicial Magistrate. However on 24.12.2001, information regarding surrender of the accused Narendra Singh was received. Later he recorded statements of Dayanand Singh, Kedar Yadav, Vijay Shanker and Manoj Kumar Singh, who are witnesses of inquest report. Statements of accused persons, namely, Narendra Singh, Dharmendra Singh and Ramesh Yadav were recorded in district jail on 03.01.2002. On 19.01.2002, the articles relating to the case were sent to the Forensic Science Laboratory, Lucknow, for examination and analysis. After concluding investigation, he submitted charge-sheet against the accused persons Narendra Singh, Dharmendra Singh and Ramesh Yadav in the court of Chief Judicial Magistrate Mau, in his own hand writing and signature, he proved it as Ext. ka-09.

24. Chandrabhan Pandey (P.W.7) in his testimony stated that inquest proceeding of the deadbody of the deceased Vijay Bahadur Singh alias Anganu Singh was conducted by him in the presence of the other witnesses. He prepared inquest report in his hand writing and signature. Proved it as Ext. ka-2. He also deposed that he prepared request Letter to CMO to conduct post mortem of the dead body of the deceased, in his own handwriting, which bears his signature. He proved it as Ext. ka-10. The witness said that Form-13 too was prepared at the time of preparing the inquest report in his hand-writing and signature. He proved it as Ext. ka-11. He further stated that he prepared photo of dead body Ext Ka-12. He also wrote letter to R.I. paper no.-14ka/01, in his own hand-writing and signature. He proved it as Ext. ka-13.

25. The above stated witnesses were put to detailed cross examination which is proposed to refer during discussion and scrutinizing and evaluation of arguments.

26. Learned counsel for the appellants has odiously argued that the conviction of the appellants is wholly erroneous and unjustified as the findings of the guilt recorded by the Trial Court is not based on correct appreciation of the evidence on record. The learned Trial Judge has lost sight of the fact that there are major contradictions and omissions in the statements of eye witnesses, who are close relatives and have fabricated a false story to implicate the appellants in the case. It is further contended that appellants has been falsely roped in the present case on account of political and otherwise personal enmity. Learned A.G.A. refuted the contentions.

27. It is common knowledge that enmity is a double edged weapon. On one side it may be a cause to falsely implicate the accused, where as it may be the real cause of the incident, on the other hand. So, benefit of enmity may go either side depending upon the facts and the circumstances

of the case. In the present case as per FIR there was an old enmity between the deceased and the accused. They have threatened him at the time of occurrence and earlier occasions too, to kill him. At an other place he has stated Complainant P.W.-1 Ram Puakr Singh, has also admitted that about twenty days ago appellants father was abusing the deceased, then he had given a blow to their father. Thus, complainant Ram Puakr Singh, who is the real brother of the deceased Vijay Kumar Singh alias Angnu, though has deposed that there was no enmity of any person with the deceased in the village, is not believable. It follows appellants has no motive or have very weak kind of motive to commit the crime.

28. Learned counsel for the appellant vehemently argued that witnesses produced by the prosecution are partisan and inimical to the appellants interested witnesses and not independent witness. They are unreliable witnesses and as such no credence can be attached to their testimony and their deposition is therefore liable to be discarded. Learned A.G.A. refuted the contention of the learned counsel for the appellants. He submitted that ordinarily a close relative would not spare the real culprit who has caused the death and implicate an innocent person. It will be beneficial to discuss law on the interested witnesses and evaluation of their evidence.

29. The above submission was thoroughly considered by the Hon'ble Apex Court in case of **Daleep Singh Vs. State of Punjab AIR 1953 SC 364** and enunciated the following principles:-

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth."

30. In a three Judges Bench of the Supreme Court of India in **Hari Obula Reddy Vs. State of A.P. (1981) 3 SCC 675** observed as under:-

"13. ...it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon."

31. Again in **S. Sudershan Reddy and others Vs. State of A.P (2006) 10 SCC 163**, the Hon'ble Supreme Court has held as under:-

"12. We shall first deal with the contention regarding interests of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

15. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dilip Singh case in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses."

32. Thus, we find that Hon'ble Apex Court in its enumerable decisions has categorically held that evidence of eye-witness, if found truthful, can not be discarded simply because the witnesses were relatives of the deceased. The only caveat is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution.

33. The testimony of a reliable witness must be of sterling quality on which implicit reliance can be placed for convicting the appellants. The

Apex Court in **Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21** has very vividly describe the characteristics of a sterling witness as under.

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co- relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

34. It is germane to point out here that prosecution in the present case has examined as many as 07 witnesses in support of its version. While there are 15 witnesses mentioned in charge sheet, Ext. Ka- 9. Out of these, prosecution has produced only two witnesses of facts and rest are formal

witnesses. PW- 1 Ram Pukar Singh, complainant, is the elder brother of the deceased Vijay Bahadur alias Angnu, while PW- 2 Panchanand Singh is the cousin brother of the deceased. Thus, they are relative witnesses and therefore, as per discussion of legal scenario their evidence should be carefully scrutinized.

35. Elaborating his arguments, learned Counsel for the appellant has submitted that the incident has occurred on 7.12.2001 at about 6 PM and it was dark. As a matter of fact it is a case of hit and run and none has seen the accused person but on account of inimical terms, appellants have been falsely implicated. As stated in the FIR, accused exhorted to kill Kapil Singh but only one accused fired a shot. It has also been argued that programme of Ramayana was going inside the house of Kapil Deo Singh and the complainant and his brother Vijay Bahadur (deceased), as narrated in the FIR were listening Ramayan and as such it is hard to believe that complainant has seen the assailants that too in the darkness of winter night. From the statement of witnesses, it is clear that improvement has been made by them to cover up the lacunae.

36. The present incident has occurred on 07.12.2001 at about 6.00 p.m. it was the month of December. There is no mention about the light on the place of occurrence in the FIR Ext. Ka-1. However, P.W.-1 in his cross-examination has stated that the Gas (petromax) material Ext. was litting and illuminating. Complainant and some other people were sitting around the fire due to cold. I.O. P.W.- 3 Yogendra Nath Singh has not shown the place where the Gas was put in the site plan Ext. Ka- 5. However, he stated that the petromax was given to one Ravindra Singh. It is also mentioned in the memo of supurdginama Ext. Ka- 3 but the same was not produced in the court while examining I.O. P.W.- 3. Thus, either there was no light or a dim light, while the witnesses were sitting in the light of fire. It cast doubt that these witnesses has seen the occurrence.

37. While referring to the statement of P.W.1-Ram Pukar Singh, learned Counsel has submitted that there are contradictions in his statement. At one place, he has stated that he and his brother were listening Ramayan and at the other place, he stated that when his brother reached at the tap for washing hands and face, Dharmendra Singh exhorted Narendra Singh to kill him and Narendra Singh fired shot on his brother. At an other place, this witness stated that both Dharmendra and Narendra were armed with weapon. In the FIR, the complainant had stated that accused persons were chased by them but in his deposition before the court this witness has stated that accused persons ran away towards the south.

38. As regard the testimony of P.W.2-Panchanand Singh is concerned, it has been urged that this witness introduced the story of light and bonfire was lighting. He was sitting there and alongwith him Ram Pukar Singh, Shiv Murat Singh and relatives of Kapil Deo Singh @ Vijay Bahadur including three to four other villagers were present. When at about 6 PM Agnu was washing his face and hands then all of a sudden Narendra Singh, Dharmendra Singh and Ramesh yadav came and surrounded Vijay Bahadur. Ramesh and Dharmendra exhorted to kill Vijay Bahadur and then Narendra Singh came on the west side and fired a shot on the temporal region and then ran away towards the south. Dharmendra was brandishing pistol and said that if any one will come forward, he would be killed. This witness further stated that police had come at the spot on the next day at about 6 AM in the morning and in his presence panchnama was written and was signed by him and also by Lal Bihari Yadav, Kedar Yadav, Vijay Shanker @ Bablu. Thus, the version given by him is altogether different than the version given by the Ram Pukar Singh (P.W.1)

39. It has also been contended that there are contradictions in the statement of P.W.Yogendra Nath, SI, P.W.6-Vinod Kumar, S.I. and Chandra Bhan Pandey, P.W.7. It has also been pointed out that the police

witness had deposed before the Court that they reached at the spot in the night itself whereas the eye witness Panch Nand (P.W.2) has stated that the police had reached at the spot next day in the morning at about 6 AM and statement was recorded.

40. Lastly, it has been urged that the learned Trial Court has erred in recording the finding of the guilt overlooking the fact that there are major contradictions in the statement of witnesses which were fatal for the prosecution. Even from the statement of the witnesses, the place of occurrence also becomes doubtful but this aspect of the matter has not been considered.

41. On the basis of evidence on record, learned A.G.A. has submitted that there is no contradiction in the statement of the prosecution witnesses and medical evidence supports the oral evidence and slight deviations in the statement of witnesses would be of no benefit to the prosecution as it would not demolish the entire prosecution version. Allegation of false implication is wholly baseless as the prosecution was successful in proving the motive of the accused persons to commit the murder of deceased-Vinay Bahadur Singh.

42. Elaborating his submissions, learned AGA has submitted that from the testimony of the eye witnesses, it is proved that the accused persons had reached at the spot with a common intention to commit the murder of Vijay Bahadur Singh with whom there was prior enmity. The medical evidence fully corroborates the prosecution version as the doctor has found gun shot injury in the post-mortem examination.

43. Here it is relevant to point out that in the FIR, the complainant has alleged that when his brother was washing hands at the Tap, Narendra Singh, Dharmendra Singh and Ramesh Yadav came from their houses and uttered that he should be killed and Narendra Singh fired a shot on his brother. The complainant, Panchanand Singh and Shiv Murat Singh ran

towards the tap and saw that the accused persons are running away after killing his brother and they were chased, but they managed to escape but before the Court this witness stated that the accused persons ran away towards the southern side; accused Dharmendra and Narendra were having Katta in their hands. Surprisingly, the name of Ramesh Yadav, who has been assigned the role of exhortation in the FIR , has not been taken and role of exhortation has been assigned only to Dhramendra Singh and Narendra Singh. Here, it is significant to point out that Shiv Murat Singh, who is said to be not only an eye witness but a material witness of the case has not been examined by the prosecution for the reasons best known to the prosecution

44. One more important contradiction in his statement is that in his examination in chief, Ram Pukar Singh witness had stated that he and his brother were listening Ramayan in the house of Kapil Deo Singh. However, in the cross examination this witness deposed that Ramayan was going on inside the room and five-six persons were reading and could be seen from the window and he has not gone inside the room. This witness further deposed that he and Vijay Bahadur were sitting at one place This witness further deposed that Shiv Murat Singh and Pancha Nand are his witness and belongs to his clan.

45. As regard the motive, this witness initially stated that regarding earlier quarrel no report was lodged but later on stated that there was no quarrel of his brother Vijay Bahadur Singh with any one and also clarified that he also had no quarrel with any one. In his cross examination, this witness further stated that his brother were threatened to death twenty days ago at the Farm House in his presence but neither any report was lodged nor any application was given in this regard.

46. It is significant to mention that different versions have been given by the prosecution witnesses with regard to registration of the FIR of the

incident and reaching of the police at the spot. The incident is said to have occurred on 7.12.2001 at about 6 PM and the FIR was lodged on the same day about 9.15 PM. The distance of the police station from the place of occurrence is said to be 9 Kilometer. Ram Pukar Singh (P.W.1), who is the complainant of the case has deposed before the court that he had reached to the police station at 8 PM alongwith Panchanand Singh and Brijesh Singh. He further deposed that he had carried the written report which he had written in his house and it took about 10-15 minutes. He further deposed that Inspector (Daroga) had come to the place of occurrence on the next day in the morning in between 6-6.30 PM. The Inspector collected the plain earth and blood stained earth and carried the dead body to Azamgarh at about 8 AM in a jeep, which was a private one. The complainant further deposed that he also went in a private vehicle. On the other hand, Pancha Nand Singh (P.W.2) in his cross-examination stated that he had gone to the police station by cycle alongwith Ram Pukar Singh, Shiv Murat Singh and Vikresh Singh for giving information at the police station and reached at about 9.00 PM but Daroga ji was not present and the Constable gave him the paper. No Inspector had visited in the night and it was in the morning at about 6 AM Inspector (Daroga ji) alongwith other police personnel had come but his statement was not recorded on that day, which was recorded after twenty two days after the post-mortem. He also stated that dead body was lying as was left in the night. However, in cross examination, this witness stated that dead body was carried to Police Line, Azamgarh.

47. Contrary to the above statement, the first Investigating Officer of the case Head Constable Chandra Bhan Pandey stated in cross-examination that he reached at the place of occurrence at about 6 PM on the same day and when he reached there Constables of police out post were present ,who had given information to the police station through telephone and the entry in this regard was also made in the General Diary.

The complainant was present at the spot and he remained there whole night and Inspector (Darogaji) had come next day in the morning at about 6-7 PM. Looking to the case diary, he stated that first 'Parcha' was written by him and first he had written the date '8.12.2001' and then after cutting '8' he had written '7'. During cross-examination, this witness took a somersault and stated that the dead body had reached to the police station in the night. The first Investigating Officer further deposed that when he reached at the spot, there was darkness and he examined the dead body in the torch light and after getting the dead body sealed, carried it in a jeep. Here, it is also relevant to point out that Yogendra Nath Singh, S.I.(P.W.3) deposed before the court that on 8.12.2001, he was posted at Sub Inspector and started investigation of case crime no.275 of 2001. He collected the plain earth and blood stained earth and prepared the memo. In cross-examination this witness admitted that earlier the investigation of the case was being conducted by Chandra Bhan Pandey, HCP.

48. Thus from the aforesaid facts, it is crystal clear that there are major contradictions and omissions not only in the statement of the eye witnesses but in the depositions of the Investigating Officers, which not only makes the entire prosecution version doubtful but also makes the presence of the eye witness and place of occurrence doubtful. It may be added that the eye witnesses, complainant and the deceased are all related to each other and belong to one clan.

49. As regard the enmity and motive, here it is relevant to point out, as averred above, that Ram Pukar Singh (P.W.1) has stated in his examination in chief that his brother (deceased) had no enmity with any person. Later on this witness stated that father of accused Narendra Singh had come at his Poultry Farm in a drunken state and started using expletive language for his family, then his brother after snatching his lathi assaulted Ram Singhasan. Since then Narendra Singh was annoyed and used to threat his brother. There is no whisper about the enmity with

accused Ramesh Yadav and Dharmendra Singh. This witness further stated that as Ram Singhasan had admitted his guilt, a compromise was arrived at. On the other hand, Pancha Nand in his cross-examination stated that he knew Ram Surat Singh, Ram Singhasan and Harendra Singh, Harendra Singh is brother of accused Narendra Singh and Ram Surat Singh is uncle of accused Narendra Singh. This witness stated that he had a fight with Ram Sakal Singh, Ram Surat Singh, Harendra Singh and Ram Singhasan Singh and he had also received injuries. However, there was a compromise much earlier and discord has ended after the compromise and they were on talking terms but there was no affinity or closeness. Thus from the statement of the P.W.1 Ram Pukar Singh and P.W.2 Panchanand Singh it can easily be inferred that there was no real and strong motive for the appellants to commit the murder of the deceased and false implication cannot be ruled out.

50. Considering the evidence and other material on record in its entirety, we are of the view that the learned Trial Judge has erred in convicting the accused-appellants overlooking the fact that there are serious and major contradictions and omissions not only in the statement of eye witnesses but in the statement of police witnesses which makes the entire story doubtful and benefit thereof will go to the appellants.

51. For the reasons aforesaid, both the aforesaid appeals are **allowed**. The impugned judgment of conviction and sentence awarded to the appellants is set-aside and the appellants are acquitted of the charges levelled against them. Appellants are on bail, they need not to surrender. Their bail bonds are cancelled and sureties are discharged.

52. Registry is directed to send a copy of the judgement along-with Trial court record to the court concerned at the earliest for compliance.

Order Date :- 29.07.2024

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