

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1247 OF 2006

Indra Pal Singh *Appellant*

Versus

State of U. P. *Respondent*

WITH

CRIMINAL APPEAL NO. 90 OF 2007

Jagat Singh *Appellant*

Versus

State of U. P.
Respondent

J U D G M E N T

Lokeshwar Singh Panta, J.

1. Both these appeals arising out of the common judgment and order dated 09.12.2005 passed by the Division Bench of the High Court of Judicature at Allahabad in Government

Appeal No. 2004 of 1981, were heard together and shall stand disposed of by this common order. By the impugned order, the High Court while setting aside the judgment of acquittal dated June 5, 1981 recorded by the Additional Sessions Judge, Hamirpur, in Sessions Trial No. 293 of 1980, convicted the accused under Section 302 read with Section 149 and Section 148 of the Indian Penal Code and sentenced them to imprisonment for life and two years' rigorous imprisonment respectively.

2. Brief facts of the case are that Subedar Singh (P.W. 1) has got three sons, namely, Jai Karan Singh, Shiv Karan Singh and Ram Karan Singh. P.W. 1 lodged F.I.R. (Ex. Ka.1) on 24.07.1980 at 6:15 a.m. at Police Station, Sumerpur situated at a distance of about 15 kms. from village Patyora, alleging therein that in the year 1976 dacoity was committed at the house of his co-villager Lalloo Singh, who doubted that the offence was committed at the instance of his son Ram Karan Singh and on that account Lalloo Singh had entertained grudge against him and his family members. One Raja *bhiah*, resident of village Surauli was also involved in the

said dacoity case and P.W. 1 appeared as a defence witness for accused Raja *bhiah* and for that reason also, sons of Lalloo Singh used to threaten him with dire consequences. He alleged that on 23rd July, 1980 his son Jai Karan Singh had gone to the market at Sumerpur and in the evening P.W. 1 went to Yamuna South Bank railway station to receive his son, who was to bring some essential articles from the market. At about 7:30 p.m., the train reached at Yamuna South Bank station. Jai Karan Singh along with Shiv Nath Kewat, Dayalu (P.W. 4) and many other persons got down from the train. He took gunny bag containing 15 seers of '*khalli*' from Jai Karan Singh who was carrying one more bag containing 3-4 kgs. of sugar. All of them proceeded towards the village. At about 8:30 p.m., they took a turn from Link Road for the pathway going to the village and Jai Karan Singh was going a few paces ahead of them. Ayodhya Singh son of Lalloo Singh and Indra Pal Singh son of Prithvi Singh armed with DBBL guns and Ranvijay Singh son of Lalloo Singh along with one Jagat Singh son of Rajwa Singh armed with SBBL guns and Ram Bahadur Singh son of Lalloo Singh who was carrying *lathi* and torch

were waiting for the arrival of his son Jai Karan Singh by the side of the pathway. Ayodhya Singh fired gunshot at Jai Karan Singh and immediately thereafter Ranvijay Singh, Jagat Pal Singh and Indra Pal Singh indiscriminately fired rounds at Jai Karan Singh with their respective guns. Jai Karan Singh, on receiving fire arm injuries, fell down near the water channel and ridge of the field of one Brinda Singh towards east side of the path way. The witnesses present at the spot flashed torches at the faces of the accused and recognized them in torch light. The accused, after committing the crime, fled away from the scene of occurrence.

3. P.W. 1 with the help of his co-villagers took the body of deceased Jai Karan Singh to his house at village Patyora. He got FIR scribed from his son Shiv Karan Singh (P.W. 5) at 3:00 a.m. on the following day of the incident and thereafter went to the Police Station, Sumerpur. He handed over the report to the H.M. Rajendra Veer Singh (P.W. 6) who prepared Check Report on the basis of which FIR (Ex. *Ka.1*) came to be registered. Sub-Inspector Asha Ram Tripathi (P.W. 7) took up investigation of the crime in his hand and rushed to the place

where the dead body of Jai Karan Singh was laid. He drew inquest proceedings on the dead body and prepared an Inquest Report (Ex.Ka.5) and other necessary papers (Ex. Ka.6 & Ka. 7) and then handed over the dead body in a sealed cover (Ex.Ka.9) along with other necessary papers to Constables Raghuraj Singh and Raja Ram for being taken to the doctor for *post mortem*. He also recorded statements of the witnesses. Site Plan (Ex. Ka.12) was also prepared and from the place of occurrence blood-stained sample was taken into possession *vide* Memo (Ex. Ka.9). Two empty cartridges and 3 *tiklis*, etc. were collected *vide* Memo (Ex.Ka.10) from the scene of occurrence. After receipt of the *post mortem* report (Ex.Ka.5) from Dr. P.N. Singh (P.W. 2) and on completion of the investigation, P.W. 7 submitted charge sheet against the accused persons. They pleaded not guilty to the charges and claimed trial.

4. The prosecution examined P.W. 1 – Subedar Singh, father of the deceased and Dayalu P.W. 4 as eye witnesses of the occurrence; P.W. 2 Dr. P.N. Singh conducted autopsy on the body of Jai Karan Singh on 25 July, 1980 at 11:00 a.m.;

P.W. 3 – H.G. Dibiya produced the case papers in the court; P.W. 5 – Shiv Karan Singh, brother of the deceased, was scribe of report (Ex. *Ka.* 1) on the dictation of his father; P.W. 6 – H.M. Rajendra Vir Singh prepared the check report at the police station on the basis of the written report handed over to him by P.W. 1 who made an entry regarding registration of the crime in G.D. and P.W. 7 Sub-Inspector Asha Ram Tripathi, Investigating Officer of the case.

5. The accused in their statements recorded under Section 313 of the Code of Criminal Procedure, 1973 denied the allegations of the prosecution. They pleaded that they have been framed in a false case due to enmity. The learned trial judge disbelieved the evidence of the prosecution witnesses and found the accused not guilty of the charges levelled against them and accordingly, acquitted them.

6. Being aggrieved by the order of acquittal of the accused recorded by the trial judge, the State of U.P. filed an appeal before the High Court. The Division Bench of the High Court by its impugned judgment and order allowed the said appeal and convicted the accused persons under Section 302 read

with Section 149 and Section 148 IPC and sentenced them in the manner noticed above. The judgment of the High Court reveals that accused-Ram Bahadur has died, therefore, the appeal against him stood abated by order dated 03 June, 2005.

7. Feeling aggrieved by and dissatisfied with the judgment and order of the High Court, Indra Pal Singh and Jagat Singh, the appellants herein, filed Criminal Appeal No. 1247 of 2006 and Criminal Appeal No. 90 of 2007 respectively. It appears from the record that Ayodhya Singh and Ranvijay Singh have not questioned the judgment of the High Court holding them guilty of the charges.

8. We have heard the learned counsel for the appellants and the learned counsel for the State and they have taken us through the evidence of the witnesses and other materials on record.

9. Learned senior counsel for the appellants first submitted that there was considerable delay in lodging the FIR (Ex. Ka1) by P.W. 1 therefore, no reliance can be placed on such a document. On examination of the evidence, it is clearly

established that the occurrence took place on 23.07.1980 at about 08:30 p.m. near village Patyora in which the accused allegedly fired gun shots at Jai Karan Singh and FIR of the occurrence was lodged at about 6:15 a.m. on the following morning at Police Station, Sumerpur which is situated at a distance of about 15 km from the place of occurrence. The High Court observed in its order that no specific question was put to P.W. 1-Subedar Singh, the informant, as to why he did not lodge FIR of the occurrence at police post Surauli which is quite near to village Patyora. On appraisal of the evidence of P.W. 1, we find that he has given explanation that due to fear from the accused and non-availability of conveyance, he could not promptly go to the police station to lodge FIR of the occurrence. He stated that after the murder of Jai Karan Singh by the accused, he with the help of his co-villagers took the dead body of his son from the place of occurrence to his house and since they were all wailing and grief stricken he got the report of the occurrence scribed by his second son Shiv Karan Singh (P.W.5) at about 3:00 a.m. on the following morning and then at about 4:00 a.m. he proceeded to the

police station, Sumerpur and handed over the written report to the police official present there. In these circumstances, the explanation offered by P.W. 1-Subedar Singh for not lodging the FIR soon after the occurrence, in our view, was quite satisfactory and convincing and there was no deliberate delay on his part in reporting the crime to the police. The first contention therefore, cannot sustain.

10. It was next contended on behalf of the appellants that the learned trial judge has noticed several contradictions and omissions in the versions of P.W. 1 – Subedar Singh and P.W. 4 – Dayalu, the alleged eye witnesses and therefore, their evidence has been rightly rejected by him, but on the contrary the High Court has mis-appreciated the evidence and found the accused guilty on unsatisfactory and unbelievable evidence. In order to appreciate this submission, we have independently examined the evidence of both the witnesses. It is the evidence of P.W. 1 that on 23rd July he had sent his son Jai Karan Singh (deceased) to Sumerpur market by train for purchasing *khalli* for the cattle and sugar for household use and his son was to return to the village in the same evening

and therefore he went to the South Block railway station where the train reached at about 8:00 p.m. Jai Karan Singh got down from the train and he was carrying one gunny bag containing 15 kgs of *khalli* and second bag containing 3 kgs. sugar. He took gunny bag of *khalli* from his son and started going to their house along with Shiv Nath, Laali, Dayalu (P.W. 4) and others who also alighted from the same train. Jai Karan Singh was going few paces ahead of him and other co-villagers. They left the Link Road and took turn on the pathway leading to their village and when Jai Karan Singh reached near the field of one Brinda Singh, Ram Bahadur Singh (accused-dead) shouted that their enemy had reached and should be killed. Ayodhya Singh fired at Jai Karan Singh with DBBL gun followed by Jagat Singh, appellant in Criminal Appeal No. 90 of 2007; Indra Pal Singh appellant in Criminal Appeal No.1247 of 2006 and Ranvijay Singh each fired at his son with their respective guns and on receiving the fire arm injuries, Jai Karan Singh fell near the water channel of the field of Brinda Singh. P.W. 1 and other persons accompanying him recognized all the accused in the torches' light which they

were carrying with them and also in the moonlit night. The accused, after committing the crime, fled away from the scene of occurrence. He requested Jagani, his co-villager, who was also coming back from the railway station and going to the village, to inform the members of his family about the murder of Jai Karan Singh. He with the help of his companions present at the place of occurrence took the dead body of his son to his house.

P.W. 4 – Dayalu fully corroborated the testimony of P.W. 1. He deposed that he recognized the appellants and other accused persons clearly in the moonlit night and in the light of torches flashed by Shiv Nath and Ram Bahadur Singh at the time of occurrence. The trial judge has disbelieved the version of P.W. 4 – Dayalu on the ground that the witness only stated that accused Ram Bahadur Singh and witness Shiv Nath (not examined) were accompanying P.W. 1 and deceased Jai Karan Singh and they flashed their torches and no other person was in possession of any torch, whereas P.W. 1-Subedar Singh stated that he and Shiv Nath flashed torches on the faces of the accused. This minor discrepancy

appearing in the evidences of P.W.1 and P.W. 4 is insignificant and immaterial to discard the testimony of P.W. 4 that he was not present at the place of occurrence. P.W. 1 has stated in the FIR that he and Shiv Nath flashed torches on the faces of the accused and in the torch light the accused were clearly recognized who after committing crime, had fled away from the scene of occurrence. P.W. 1 and P.W. 4 have categorically stated before the Court that in addition to torch light it was moonlit night in which the accused were easily recognized by them. It is the evidence of P.W. 7 that at about 9:30 a.m. on the following morning of the incident, he took torches from P.W. 1 and Shiv Nath and on inspection thereof, these were found in working condition. Thus, the High Court has rightly held that the trial judge has given undue importance to such minor inconsistencies appearing in the statements of the two eye witnesses which are of very trivial nature and the accused could not have been acquitted on such insignificant contradictions.

11. The learned senior counsel then contended that the statement of P.W. 4 was recorded by the Investigating Officer

after about 7-8 days from the date of occurrence which would also prove that P.W. 4 was not present on the spot as projected by the prosecution. It is the evidence of P.W. 4. that in the early morning of the following day of occurrence, he had gone to Hamirpur for doing work and stayed there for about 7-8 days. The trial judge disbelieved the testimony of this witness on the ground that the witness could not disclose the name of the shop keeper from whom he purchased blade for his *randdha* at Sumerpur market on the day of occurrence. We are of the considered view that the approach of the trial judge in appreciating the evidence of the eye witness was wholly unwarranted and uncalled for. The presence of P.W. 4 at the time of the incident has been fully proved on record and his evidence is consistent and trustworthy to prove that the accused persons had fired gun shots at Jai Karan Singh on the day of occurrence when he along with deceased Jai Karan Singh; his father P.W. 1, and other co-villagers were returning from the railway station to their village. The trial judge observed that as per the *post mortem* report deceased Jai Karan Singh was a young man of 35 years of age and of good

built and, therefore there was no need for P.W. 1-Subedar Singh to go to the railway station to take a bag of *khalli* from his son and carry the same from the railway station to the village. It has come in the evidence of P.W. 1 that his son Jai Karan Singh was a patient of asthma and therefore he used to be vigilant that his son should not take much physical strain and because of that reason he went to the railway station to share with his son the burden of the load of one bag containing 15 kgs. of '*khalli*'. We do not find anything wrong if P.W. 1 had gone to the railway station for extending some help to his son. Thus, The entire approach of the trial court in appreciating the evidence of the eye witnesses is perverse and grossly improper.

12. Learned senior counsel for the appellants next contended that the ocular testimony of P.Ws. 1 and 4 has been rightly discarded by the learned trial judge as their testimony is at variance with the medical evidence. It was contended that both the eye witnesses have stated that 4 gun shots were fired at the victim, but a perusal of the *post mortem* report would go to show that P.W. 2 – Dr. P.N. Singh found only 3 fire arm

wounds on the body of the deceased. We have examined the evidence of Dr. P.N. Singh, who at the relevant time, was posted as Surgeon at District Hospital, Hamirpur, and conducted autopsy on the dead body of Jai Karan Singh on July 25, 1980 at about 10:00 a.m. and found the following *ante mortem* injuries:-

1. Gun shot wound of entry 4.5 cm X 4 cm X brain deep on the left side of head near the external ear, upper part of external ear was lacerated, the brain matter was seen coming out of the wound, tattooing was present all around, fracture of left temporal bone was present.
2. Gun shot wound of entry 2.5 cm X 2 cm X bone deep on the left side of upper part of the neck near the ear lobule, lower part of the external ear with ear lobule was lacerated, tattooing was present.
3. Gun shot wound of exit 14 cm. X 6 cm X brain deep on the left side of forehead and face, extending to the left eye, nose and right eye.
4. Gun shot wound of entry 1.5 cm X 1.5 cm X chest cavity deep on the right side of the chest in mid-auxiliary line.
5. Gun shot wound of exit 2 cm X 2 cm X chest cavity deep on left side of chest, lower part in posterior auxiliary line 16 cm below and behind the left nipple.

6. Gun shot wound of exit 3 cm X 3 cm X abdominal cavity deep on the left side of back, 4 cm outer to mid-line.

Face was disfigured due to injuries and left eye destroyed completely and the right eye was collapsed. On internal examination of the dead body, Dr. P.N. Singh – P.W. 2 observed that there was fracture of left temporal, parietal, frontal and left lower jaw and both upper jaw bones. Membranes of the brain were torn and lacerated at several places. The brain was pulpy and seen coming out of the wound. The bone of the skull was fractured. Five small rounded pellets were recovered from the cranial cavity.

There was fracture of the left 8th rib behind and right 7th rib in the front. Pleura were lacerated at several places. The right lung was lacerated and lower lobe at two places. The pericardium was punctured at 4 places, two in front and two behind. The heart was empty and punctured at four places, corresponding to that in the pericardium. There was about half litre blood in the right chest cavity. Two wadding were recovered from the left side chest cavity and three pea sized

pellets were recovered from one in between 6th and 7th ribs on the left side and one pellet in between 3rd and 4th rib on the left side and near the lower part of sternum with the fracture of sternum.

In the opinion of the doctor, the death of Jai Karan Singh was as a result of head injuries and cerebral laceration and shock and those injuries were sufficient in the ordinary course of nature to cause his death. A perusal of the *post mortem* report would go to show that gun shot wounds of exhibit nos. 5 and 6 were corresponding to gun shot wounds of entry nos. 2 and 4. Injury no. 3 - lacerated gun shot wound of exit 14 cm X 6 cm X brain deep on left sides of forehead and face extending on left eye nose and right eye was corresponding to injury no. 1 – lacerated wounds (gun shot wound) of entry 4.5 cm X 4cm X brain deep on left side head near external ear, upper part of internal ear lacerated, brain matter coming out of the wound. Looking to the size of both the wounds i.e. one of entry and one of exit (injury nos. 1 and 3) which would appear with two shots fired from gun hitting the deceased on his head over lapping on left side of his head because in that

position only the size of the wound of exit may be 14 cm X 6cm X brain deep. On internal examination of the deceased, left temporal parietal and frontal bones were found fractured. Left lower jaw was also found fractured. The brain was pulpy and seen coming out of the wound. The bone of the skull was also found fractured. Thus, the High Court has rightly held that there was no real inconsistency between the ocular testimony of eye witnesses and medical evidence. The finding of the learned trial judge on this point was contrary to the proper appreciation of the eye witnesses' account corroborated by the medical evidence and the High Court is right in rejecting the said finding of the trial court.

13. The learned senior counsel for the appellants then contended that there was no motive for the accused to commit the murder of Jai Karan Singh because as per the prosecution evidence, the accused, if any, bore grudge against Ram Karan Singh, the brother of the deceased at whose instance dacoity was committed at the house of Lalloo Singh and P.W. 1 Subedar Singh appeared as a defence witness for accused Raja *bhiah*. The learned counsel also contended that since the

deceased was a member of the gang of dacoits, there was every possibility that he might have been killed in a gang rivalry and the appellants have been falsely implicated in the present case. There is no evidence on record to support this contention and it deserves to be rejected. It was urged by the learned senior counsel that P.Ws. 1 and 4 are interested witnesses and as such no implicit reliance can be placed on their testimony connecting the appellants with the commission of the crime. It is no doubt true that P.W. 1 is the father of the deceased. P.W. 4 is a co-villager of P.W. 1 who has corroborated the testimony of P.W. 1 on all material aspect of the case and has clearly recognized the accused persons who on the day of occurrence committed the murder of Jai Karan Singh. The testimony of P.Ws.1 and 4 has been found to be satisfactory, consistent and credible by the High Court. Both the witnesses have been subjected to searching cross-examination by the defence, but nothing tangible material has been extracted from their evidence to create any shadow of doubt to disbelieve and discard their truthful testimony.

14. It is well-settled that if the eye witness is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would honestly be interested in ensuring that real culprits are punished. We do not find any merit in any of the submissions of the appellants; therefore, we confirm the convictions.

15. On our examination of the judgment of the High Court, we find that the High Court has subjected the prosecution evidence to critical scrutiny and has reached the conclusion that so far the appellants herein are concerned, the charges under Sections 302 read with Section 149, IPC and Section 148, IPC are fully established against them. We are, therefore, satisfied that the prosecution has successfully proved its case against the appellants.

16. We, therefore, concur with the view of the High Court and affirming the conviction and sentence of the appellants, dismiss these appeals.

.....**J.**
(Lokeshwar Singh Panta)

.....**J.**
(Aftab Alam)

New Delhi,
December 02, 2008.