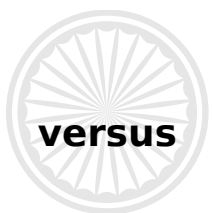


REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(S).256-257 OF 2009

Veer Singh & Ors.

..

Appellant(s)
versus**State of U.P.**

..

Respondent(s)
J U D G M E N T
॥ यतो धर्मस्ततो जयः ॥**C. NAGAPPAN, J.**

- JUDGMENT
1. These two appeals are preferred against the common judgment of the High Court of Judicature at Allahabad in Criminal Appeal No.749 of 1996 and Criminal Appeal No.761 of 1996 dated 1.10.2007.

2. The appellants in Criminal Appeal No. 749 of 1996 are accused Nos. 1 to 4 and the appellant in Criminal Appeal No.761 of 1996 is the accused No.5, in the Sessions Case No.72 of 1985, on the file of Third Additional Sessions Judge, Muzafarnagar, and they were tried along with three other accused for the alleged offences under Sections 147,148, 307 read with Section 302 read with Section 149 and Section 452 of Indian Penal Code. Sessions Court found accused Nos. 6 to 8 not guilty of the charges and acquitted them and at the same time convicted accused Nos.1 to 5 for the charge under Section 302 read with Section 149 IPC and sentenced them to death, subject to confirmation by the High Court; convicted them for the offences under Section 307 read with Section 149 of IPC and sentenced them to undergo rigorous imprisonment for a period of 5 years; convicted them for the offence under Section 452 IPC and sentenced them to undergo rigorous imprisonment for a period of 4 years, and had also convicted Veer Singh, A-1, Takal Singh A-2 and Balkar

Singh A-5, for the offence under Section 148 IPC and sentenced them to undergo RI for a period of 2 years and had convicted Amrik Singh, A-3 and Kamir Singh, A-4, for the offence under Section 147 IPC and sentenced them to undergo rigorous imprisonment for a period of one year.

3. Aggrieved by the conviction and sentence accused No.1 to 5 preferred appeals being Criminal Appeal No.749 of 1996 and Criminal Appeal No. 761 of 1996 and a Reference regarding death penalty was also made to the High Court. Besides the State also preferred an appeal being Appeal No.1341 of 1996, challenging the acquittal of accused Nos.6 to 8. The Appeals and Reference were heard together and the High Court by its common judgment dated 4.12.1997 allowed the Criminal Appeals filed by accused Nos.1 to 5 and rejected the Reference and acquitted them of all the

charges. It also dismissed the Criminal Appeal preferred by the State.

4. Challenging the said judgment the State of U.P. preferred Civil Appeal Nos.727 - 729 of 1998 and this Court allowed the appeals and remitted the matter to the High Court for fresh hearing. Thereafter, the High Court by common judgment dated 1.10.2007 commuted death sentence recorded against the -- accused Nos.1 to 5 to one of life imprisonment and upheld the conviction and sentence imposed by the Sessions Court against them for all the charges by dismissing the appeals in Criminal Appeal No.749 of 1996 and Criminal Appeal No.761 of 1996. It also dismissed the State appeal preferred challenging the acquittal of accused Nos. 6 to 8. Aggrieved by the conviction and sentence accused Nos. 1 to 5 have preferred the present appeals.

5. The prosecution case as it discerned from the records is briefly, as follows :

Shisha Singh and Mohar Singh were residents of village Dongpura, whereas Gurdip Singh was resident of adjacent village Varnau. On 13/14.7.1984, at about midnight Gurdip Singh heard firing and cries from the houses of Shisha Singh and Mohar Singh and armed with his licensed gun he along with Jassa Singh and Hazoor Singh moved towards the house of Shisha Singh. In the moonlight and the light of the torch he saw Kartar Singh and his son Mahender Singh standing on the roof top of the house of Shisha Singh holding gun and country made -pistol and Kartar Singh was shouting aloud to his sons Mahendra Singh, Lakkha Singh, Ginder Singh and Sinder Singh to eliminate the whole family of Shisha Singh and Mohar Singh and that none should escape away. They fired several gun shots and Gurdip Singh withdrew himself back and at that time Harbans Kaur wife of Shisha Singh escaped from the house with injuries and came and told him that Kartar Singh and his four sons accompanied by all the four sons of Sampuran Singh and Balkar Singh had killed all the family members of Shisha Singh and Mohar Singh and sought

help from him. Harbans Kaur was taken to a safer place and thereafter Gurdip Singh along with Jaswant Singh went to the Jhinhana Police Station and gave an oral complaint which was reduced to writing by PW14 Head-Mouri and First Information Report came to be registered at about 4.15 a.m. on 14.7.1984. The police party rushed to the place of occurrence and S.J. Mohd. Akhtar, S.O., Jhinhana Police Station, took up the investigation and sent the injured to the hospital. He seized material objects from the place of occurrence and conducted inquest on the dead bodies and -prepared inquest reports and sent the bodies for post-mortem examination.

6. PW 6 Dr. N.K. Sharma examined Harbans Kaur at 6.30 a.m. on 14.7.1984 in the Civil Hospital Shamli and found following injuries:

“i) Lacerated wound measuring 11 cms x 1.5 cms x bone deep slanting on the left side of head 6.5 cms above from the left ear. Wound had been bleeding.

ii) Lacerated wound measuring 1.2 cms x 0.5 cm x bone deep on the left ear, bleeding.

iii) Bluish mark in red colour in the area of 7 cms x 1 cms on the left cheek in between the injury No.2 and 4

iv) Lacerated wound measuring 3 cms x 0.7 cms x across through the right cheek. Lacerated wound measuring 3 cms x 0.3 cms x bone deep on the portion of jaw opposite to it.

v) Red bluish marks in the area of 28 cms x 1.5 cms on the third upper portion of back on both side of the backbone.

vi) Many lacerated wounds in the area of 37 cms x 28 cms of chest and abdomen on the frontal portion, out of these the large wound was measured as 3 cms -

x 0.7 cm x depth was not measured and the smallest wound was measuring 0.2 cms x 0.2 cm x muscle deep. Some article like hard pellet felt in the injury. Blackening was present nearby the injury.

vii) Lacerated wound measuring 1 cm x 0.7 cm x muscle deep, nearby to it, skin has peeled towards the inner side of the left thigh.

viii) Abrasion in the area of 5 cms x 1.5 cm on the frontal portion and left side of the left knee."

The Doctor opined that injury No.1 could have been caused by sharp-edged weapon while injury no.6 could have been caused by a fire arm.

7. Dr. N.K. Taneja (PW 1), Dr. R.K. Vats (PW 2), Dr. B.K. Mishra (PW 3), Dr. Suresh Chand (PW 10), Dr. R.S. Kasana (PW 11) and Dr. D.C. Mohar(PW 12) conducted autopsy on the bodies of 12 victims. They opined that the death occurred to all the victims due to shock of hemorrhage as a result of ante-mortem injuries. Exh. 1 to 6 and 9 to 14 are the post-mortem certificates issued by the Doctors.

JUDGMENT

8. During the investigation the Investigating Officer arrested the accused and on the information furnished by them made recoveries of the weapons and other material objects under Mahazar (Fard). After completing investigation he filed charge-sheet against all the accused totaling 13. One of the accused died and the

Sessions Court framed charges against the accused persons and during the trial the prosecution examined 18 witnesses and marked 93 Exhibits. During trial four accused absconded. The Sessions Court examined accused Nos.1 to 8 under Section 313 Cr.P.C. All of them denied the testimony of the prosecution witnesses and stated that they have been falsely implicated due to enmity. The Sessions Court convicted accused Nos. 1 to 5 for the charges as indicated above and acquitted accused Nos. 6 to 8. On appeal the High Court acquitted all the accused and on further appeal by the State this Court remitted the matter back to the High Court for reconsideration. Thereafter the High Court has passed the impugned judgment. Aggrieved by the conviction and sentence of the High Court accused Nos.1 to 5 have preferred these appeals.

9. Mr. R.S.Sodhi, learned senior counsel for the appellants submitted that Harbans Kaur is the sole eye-witness to

the occurrence and in her earlier statement before the Magistrate within a few hours of the occurrence, she has told that Surender Singh has fired gun shots at her and Surender, Mahender, Jinder who are sons of Kartar Singh were involved and thereafter in her statement given before the I.O. in addition to the above said accused persons she named the appellants/accused Nos.1 to 5 amongst the assailants and, therefore, her testimony is not reliable, and lot of material improvements were introduced and there is no motive attributable to the present appellants and it's a midnight occurrence and in the absence of effective source of light it is doubtful as to whether the witness could have recognized the assailants and the appellants have been falsely implicated in the case.

10. Per contra Mr. Ratnakar Das, Senior Advocate appearing for the respondent contended that Harbans Kaur was seriously injured in the occurrence and only one question was asked by the Magistrate as to who caused

injury to her and in her reply -she named Surender Singh and the other sons of Kartar Singh and it related to a part of occurrence so far as the injured is concerned and did not in any way relate to rest of the occurrence and after gaining full consciousness in her statement given before the Investigation Officer she has narrated the entire occurrence and the names of all the accused, and in the FIR which came into being immediately after the occurrence based on the complaint given by Sardar Gurdip Singh, the names of all the accused persons are found mentioned and there was also motive for the occurrence.

11. Harbans Kaur is the wife of Shisha Singh and the dwelling house of Mohar Singh was adjacent to her house. PW 4 Harbans Kaur in her testimony has stated that on the fateful night she along with her sons Joginder Singh and Jassa Singh and her daughter Rano, Joginder's wife Bhajan Kaur and her three children Bagga Singh, Phulvender and Gurmit Singh were

sleeping in her house and her husband was sleeping in the tubewell and a lantern was burning in the house and on hearing the barking of dogs they woke-up and saw group of people at the -gate including Kartar Singh and his four sons namely Mahendra Singh, Lakkha Singh, Ginder Singh and Sindar Singh and they were carrying gun, country made pistol, axe and spade. She also noticed among them the four sons of Sampuran Singh namely appellants Veer Singh, Tahal Singh, Amreek Singh and Kamir Singh along with Balkar Singh armed with weapons and lathi in the assembly, and out of fear she and her family members went into a room and bolted the door from inside. Kartar Singh and Mahender Singh climbed up the roof and started demolishing the roof and threw burning wood from the roof. Kartar Singh was shouting aloud to his sons to finish off all the members of family of Shisha Singh and Mohar Singh and not to allow anybody to escape alive. It is her further testimony that when she and the other family members tried to escape, accused Kartar Singh,

Mahender Singh, Balkar Singh and Amreek Singh let loose killing spree and initially killed her daughter Rano, her daughter-in-law Bhajan Kaur, her sons Kulvendra and Gurpreet Singh and they fired gun-shots on her which struck on her chest and accused Sinder attacked her with an axe on her hand and mouth and her sons Jassa Singh and Joginder Singh were killed outside their house when they tried to run away. She heard cries emanating from the house of Mohar Singh and five persons of their family were also killed and she ran to the field of paddy hiding herself where she met Gurdip Singh, Hazoor Singh and Jaswant Singh and narrated the occurrence to them and sought their help to lodge the complaint and Gurdip Singh along with Jaswant Singh proceeded to the Police Station. She has further testified that she asked Hazoor Singh to go to the tubewell and inform her husband about the occurrence. Hazoor Singh came back and told her that Shisha Singh and Mohar Singh were also hacked to death.

12. From the above testimony it becomes evident that PW 4 Harbans Kaur has witnessed the occurrence and also sustained grievous injuries. Immediately after the occurrence in the morning itself Harbans Kaur was admitted in the hospital for treatment and information was sent to Magistrate for recording her dying declaration. In the hospital she was examined by PW 6 Dr. N.K. Sharma and he noticed 8 injuries on her body and he has expressed opinion that the lacerated wounds could have been caused by sharp-edged weapons and injury No.6 could have been caused by firearm. The injuries sustained by her were serious in nature. The SDM Shamli reached the hospital at 12.45 p.m. and recorded her statement in question-answer form and only one question was asked as to how she sustained the injuries and she told that she was shot by Surender Singh in the presence of other sons of Kartar Singh. In other words the reply pertained only to that part of the occurrence in which she was injured and not the entire occurrence. In fact PW 4 Harbans Kaur in her

testimony before the Court has clearly stated as to why she has given a limited answer to the Magistrate. Further it is not a dying declaration since she survived and it is only a statement under Section 164 of the Cr.P.C. which can be used under Section 157 of the Evidence Act for the purpose of corroboration and under Section 155 of the Act for the purpose of contradiction. This statement did not relate to the entire occurrence. It must be borne in mind that she had witnessed the brutal murder of all her family members by the appellants and other accused during the occurrence and when she was in a state of shock in the hospital she had given answer to the -question put by the Magistrate. After regaining her health when she was examined by the Investigation Officer, she has stated the entire occurrence naming the assailants and the attack made by them with weapons.

13. There is intrinsic evidence available on record which lends credence to her testimony. The occurrence took place in the midnight and the complaint was lodged in Jhinhana Police Station at 4.15 a.m. on 14.7.1984 without any loss of time. The complainant Gurdip Singh was also murdered before the trial. In the complaint Gurdip Singh has stated that during midnight on the occurrence day he heard loud noise and screaming from the house of Shisha Singh and Mohar Singh. He took up his licensed gun and moved towards the house of Shisha Singh with Jassa Singh and Hajoor Singh and saw in the moon lit night and also in the light shed by the torch, Kartar Singh and his son Mahender Singh standing on the roof of Shisha Singh's house and Kartar Singh loudly directed his sons to wipe off all the family members of Shisha Singh and Mohar Singh and when he and his fellows challenged, all of a sudden the assailants opened -fire on them and he stepped back and it was at that time injured Harbans Kaur who escaped from the occurrence place met him and told

him that Kartar Singh and his sons along with other accused have killed all the members of her family and also the family of Mohar Singh, and pleaded for help and to inform the police. After providing her safety he went to the Police Station and gave oral complaint which was reduced to writing and he appended his signature on it.

14. The Head-Mouri of the Police Station Shri Inder Pal Sharma, PW14 has recorded the oral complaint of Gurdip Singh and registered the FIR, Exh.Ka-18. The extract of G.D. is Exh.Ka-19. The names of assailants including the names of the present appellants are found mentioned in the complaint lodged by Gurdip Singh. It is also relevant to point out that no enmity is attributed to Gurdip Singh against the assailants and there is no reason for him to falsely implicate the appellants in the case.

15. Hazoor Singh has been examined as PW 5 and in his examination-in-chief he has stated that on the occurrence night he heard the noise of firing coupled with screaming cries from the house of Shisha Singh and Mohar Singh and he went to the house of Jassa Singh and both of them went to the house of Gurdip Singh who accompanied them by taking gun and torch and when they went near the house of Shisha Singh they saw several men and he could not identify any of them and Harbans Kaur met them there and told them that Kartar Singh and other assailants have attacked them. At this point of time he was declared hostile by the prosecution and in the cross-examination he stated that Gurdip Singh had lodged the complaint about the occurrence in the Police Station and when Harbans Kaur narrated the occurrence, he was also present at the place and on the request of Harbans Kaur he went to the tubewell and found Shisha Singh and Mohar Singh lying dead and he informed Harbans Kaur about the same and she became unconscious. It is settled law

that the testimony of the hostile witness need not be discarded in toto and that portion of testimony in the chief-examination which supports the prosecution case can be taken for consideration. In the present case, in the examination-in-chief itself PW 5 Hazoor Singh has admitted about his going to -the place of occurrence along with Gurdip Singh and Jaswant Singh on hearing the noise of firing and cries emanating from the house of Shisha Singh and Mohar Singh and the narration of the occurrence by Harbans Kaur to them which led to lodging of the complaint. The above testimony of PW 5 lends credence to the testimony of PW 4.

16. The Investigation Officer PW 18 S.J. Mohd. Akhtar, after taking up the investigation went to the occurrence place and seized blood-stained materials and also went to the roof of the house of Shisha Singh and took brick from the damaged roof and also ashes from the room, which have been marked as Exh. Ka 40 and 41,

respectively. This also lends credence to the testimony of PW 4 Harbans Kaur that the assailants damaged the roof and threw burning wood inside the room during the occurrence.

17. Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity multiplicity or plurality of witnesses. It is not the number of witnesses but -quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. (Vide: **Vadivelu Thevar and Anr. vs. State of Madras** AIR 1957 SC 614; **Kunju @ Balachandran vs. State of Tamil Nadu** AIR 2008 SC 1381; **Bipin Kumar**

Mondal vs. State of West Bengal AIR 2010 SC 3638; **Maresh and Another vs. State of Madhya Pradesh** (2011) 9 SCC 626; **Prithipal Singh and ors. vs. State of Punjab and anr.** (2012) 1 SCC 10; **Kishan Chand vs. State of Haryana** JT 2013 (1) SC 222 and **Gulam Sarbar vs. State of Bihar (Now Jharkhand)** - 2013 (12) SCALE 504).

18. In the present case we are left with the sole testimony of injured eye-witness PW4 Harbans Kaur. She has lost all the members of her family in the attack during the occurrence. -There is no reason for her to falsely implicate any of the accused in the case. On the contrary she would only point out the correct assailants who are responsible for killing her family members. We are of the considered view that the testimony of PW4 Harbans Kaur is cogent, credible and trustworthy and has a ring of truth and deserves acceptance. All the 12 victims of the occurrence died of homicidal violence is established by the oral testimony of the doctors who

conducted autopsies on their bodies and the certificates issued by them to that effect.

19. There was also motive for the occurrence. It is the testimony of the PW4 Harbans Kaur that her husband lent a sum of Rs.8000/- to Mahender Singh son of Kartar Singh 8 years prior to the occurrence and he was avoiding to pay back which created bitterness. Besides the above, it is also indicated in her testimony that Mahender Singh suspected that family members of Harbans Kaur had tipped the police about the activities of Mahender Singh which led to his arrest twice by the Jhijnjhana and Kairana Police. It is her further testimony that Mohar Singh has also lent some money to Mahender Singh and this testimony -also finds support from the evidence of PW 9 Mukhtiyar Singh son of Mohar Singh to the effect that Lakka Singh had taken Rs.1600/- from Mohar Singh about 5 years prior to occurrence which he had declined to pay despite

repeated demands. Both the above witnesses namely PW4 Harbans Kaur and PW9 Mukhtiyar Singh have testified that Mahendro sister of Mahender Singh had developed illicit intimacy with Avtar Singh @ Pappu son of Mohar Singh and had once outraged her modesty which led to convening of a Panchayat and decision thereof. Enraged by this Mahender Singh wanted to take revenge and that has resulted in the occurrence. In this context it is relevant to point out that the appellants in their answers to the questions put to them during proceedings under Section 313 Cr.P.C. in the trial have alleged that they have been falsely implicated in the case on account of enmity.

JUDGMENT

20. From the evidence on record we are inclined to hold that appellants along with other accused armed with weapons had committed trespass into the dwelling houses of Shisha Singh and Mohar Singh during midnight with a view to commit murder of -the family

members of Shisha Singh and Mohar Singh and carried out the same. The High Court has rightly sustained the conviction on the appellants and the sentence awarded to them are also proper.

21. We find no merit in the appeals and the same are dismissed.

.....J.

(Sudhansu Jyoti Mukhopadhyaya)

.....

.....J.

(C. Nagappan)

New Delhi;

December 10 , 2013.

JUDGMENT