

CASE NO.:
Appeal (crl.) 1644 of 2005

PETITIONER:
Jagdish Murav

RESPONDENT:
State of U.P. & Ors

DATE OF JUDGMENT: 24/08/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The Appellant before us was prosecuted for commission of an offence under Section 307 of the Indian Penal Code for making attempt to murder of Babu Lal Yadav (PW-2). The first informant Ramsurat (PW-1) was his uncle being brother of Ramashray, father of PW-2. PW-2 was a resident of Pukhar within the jurisdiction of the Police Station Basgaon. When the alleged occurrence took place, he was working as a driver of a vehicle belonging to one Mangal Prasad. He had parked the said vehicle at Kovadeh near Sahabganj, allegedly, waiting for the passengers.

The Appellant together with other two accused, viz., Ramsahay, Udaybhan and Ganga who were residents of his village allegedly were present at the place of occurrence. The relationship between the parties admittedly was not good. Ramashray, father of PW-2 had an ongoing dispute with Ramniwas, father of Accused No. 4, Ramsahay and Vyas, father of Accused No. 3 Udaybhan. Admittedly Udaybhan was the uncle of Ramvander Pandey who instituted a case against the brother of Ramsurat under Sections 323, 504 and 506 of the Indian Penal Code. They allegedly asked him to withdraw the litigations to which he replied that he should ask therefor the persons concerned, i.e., who had been fighting out the cases.

As per the prosecution witnesses, the accused had come near the vehicle of the deceased. He wanted to come out of the vehicle but he was prevented from doing so. Thereafter upon alleged exhortation of Ramsahay, Udaybhan and Ganga, the Appellant herein allegedly fired a shot at his neck from his katta (country made pistol) injuring right side of his neck.

We may in view of the aforementioned backdrop of events have a look at the evidences brought on record.

PW-1 indisputably is a chance witness. He had travelled a distance of 35 kms. from his village to Sahabganj only to purchase some household articles, viz., sutli, dalda, mirch, etc. He admitted that the said articles were available in his own village.

He allegedly had seen the owner of the vehicle of which PW-2 was the driver. He named one Ashok Babu as the owner of the vehicle. He had allegedly talked with him for about 2-4 minutes. From the materials on records, however, it appears that the owner of the said vehicle was one Mangal Prasad. Ashok Babu allegedly had informed him that the deceased was at Kovadeh. He reached the place of occurrence within five minutes thereafter. Allegedly, two other persons, namely, Dhanusdhari and Chhedhi also visited the said place. They were not

examined for reasons best known to the prosecution. If PW-1 is to be believed, the occurrence took place at about 5.30 p.m. He not only heard conversations between the deceased and the Appellant but also saw the incident.

Ashok Babu and Mangal Prasad immediately after the occurrence allegedly came to the spot and took PW-2 to the Medical College. A First Information Report was lodged at 10.15 p.m. on the same day. Although PW-1, the informant allegedly went to the Medical College, he did not talk to the doctor. It was Mangal Prasad who took the injured to the doctor. Parentage of PW-2 was also not disclosed before the hospital authorities, which was unusual if PW-1 had taken him thereto.

PW-2, however, stated that he had taken the vehicle bearing No. DDM 4303 to Khalilabad. On the fateful day, however, he was driving a vehicle bearing registration No. URO 9966. He had gone to Deoriya wherefrom he returned about at 7 p.m. PW-2 stated that at about 8 p.m. he went to meet his employer who had asked him to take the vehicle to Kodah to get passengers. PW-1 deposed that he reached Medical College at 10.15 p.m. He was there for about one hour. He came to police station thereafter which would mean that he reached police station at about 12 O' Clock in the night. The First Information Report, as noticed hereinbefore, was said to have been registered at about 10.15 p.m. According to PW-1, PW-2 had been taken straight to the Medical College. The doctor's report which was marked as Ex. P-2, however, clearly demonstrates that the injured was taken to the District Hospital first and thereafter he was referred to the Medical College. Despite the fact that he was referred by the District Hospital, PW-2 was examined by an anesthetist. An X-ray was advised which was taken.

The matter was investigated by Shri Fadinder Singh Yadav who examined himself as PW-4. He allegedly recorded the statements of the persons present at the spot. No independent witness has, however, been examined by the prosecution. He visited the spot. He is said to have prepared a site plan, which was not brought on record. He did not seize the Swaraj Mazada vehicle. He had merely taken a piece of the seat which was said to be blood soaked but the report of serologist was not made available. At the place of incident, he did not find any cartridge or bullet which was unlikely. There exists a contradiction also in regard to the place of arrest of the accused persons. They were said to have been arrested in their village Moja Fulhar as disclosed by PW-1. PW-4, however, states that all the accused persons were arrested from the taxi stand of Gorakhpur on 13.3.1993. It is wholly unlikely that the accused persons would come back to the place of occurrence.

The original general diary has not been produced despite the fact that a specific defence was raised that the First Information Report was ante-timed and ante-dated. The Circle Officer, whose office is situate at about 1 and = kms. from the police station and was housed in the building of Kotwali Police Station, saw the First Information Report only on 11th March, 1993. It reached the court of magistrate much later, i.e., on 16.3.1993.

The statement of the complainant was not recorded in the general diary. The Investigating Officer, despite the First Information Report, did not visit the hospital immediately but did so only on 26.3.1993 to record the statement of the injured. He did not explain as to why he could not record the statement of the PW-2 earlier. The doctors who were examined on behalf of the prosecution did not state that the injured was not in a position to make any statement. The time when the recording of the statement of PW-2 commenced and completed had not been recorded in the general diary. He accepted that no certificate was obtained from the doctor to show that PW-2 was unable to make any statement. According to PW-1, the Investigating Officer reached Medical College at 8 a.m. the next morning and his statement was taken there; whereas

according to the Investigating Officer, the statements of the witnesses were recorded at the place of occurrence.

PW-2, in his statement, categorically stated that PW-1 came to see him on 7.3.1993. They talked to each other. PW-2 had not seen the alleged eye witnesses at the place of occurrence before the incident. It was the witnesses, viz., PW-1, Dhanusdhari and Chhedi had allegedly informed him that they had come to Sahabganj and witnessed the incident. PW-1, it is interesting to note, did not say so. Dhanusdhari and Chhedi, despite being relatives of PW-2 were not examined. The reason for their non-examination has not been disclosed. PW-3 Dr. Birender Kumar was on emergency duty. According to the doctor, thumb impression of PW-2 was taken on the hospital records. Thumb impression of Mangal Prasad had also been taken. PW-2, therefore, when examined by the doctor, was not unconscious. There was no reason as to why the thumb impression of the alleged eye witnesses and close relative of PW-2, viz., PW-1 was not taken. In fact there is nothing on record to show that PW-2 was taken to hospital by PW-1.

The injury of PW-2 shows that the shot has been fired from a close range. The doctor in his evidence stated that the shot had been fired from a distance of six paces.

The statement of PW-1 is full of contradictions. He in his First Information Report did not disclose that immediately after the incident he had gone to the District Hospital in the car sent by Mangal Prasad and from there he took PW-2 to the Medical College. Had he done so, the same would have been disclosed in the First Information Report.

The learned Sessions Judge passed the judgment of acquittal opining that the presence of PW-1 was wholly doubtful. In view of the distance of the place of incidence from his residence, it was further opined that it was unlikely that he would travel so far for nothing. His presence was also doubted having regard to the fact that PW-1 did not take PW-2 to the District Hospital. According to PW-1, he took PW-2 directly to the Medical College whereas the evidences on record clearly show that he had first been taken to the District Hospital and then the case was referred to the Medical College.

No independent witness was examined. The enmity between the PW-2 and the accused persons being admitted, the claim of the Appellant being falsely implicated cannot be ruled out. His testimony was also found to be doubtful by the learned Trial Judge in view of inherent contradictions in his different versions. It is borne out from the records that he made contradictory and inconsistent statements.

The learned Trial Judge also doubted the veracity of the story as disclosed by PW-2. PW-2 was a driver. He had been going from place to place. The accused persons who were four in number, therefore, could not have any premeditation to come to the place of occurrence in the night from a distance of 35 kms. to commit the offence. The fact that PW-2 would park his vehicle at the place of occurrence could not have been known to the accused persons. PW-2 stated that he had seen PW-1 and the other two witnesses whereas before the Investigating Officer he had stated that it was PW-1 who told him thereabout.

The learned Trial Judge drew adverse inference for non-examination of Mangal Prasad, employer of PW-2 and, particularly, having regard to the fact that he had got him admitted in the hospital. Dr. V.S. Mehrotra who had taken the X-ray of PW-2 was not examined. The learned Trial Judge also found that motive for commission of the offence was not established. It was further opined that the First Information Report was ante-dated and ante-timed.

On an appeal having been preferred by the State against the said

judgment of acquittal against all the four accused, leave was granted by the High Court only against the Appellant herein.

The High Court in its impugned judgment, however, reversed the findings of the learned Sessions Judge opining:

- (i) There was nothing unusual if PW-1 thought to visit Gorakhpur to make sundry purchases and meet PW-2.
- (ii) He being an illiterate person could hardly make a distinction whether it was 8 O'clock, 10 O'clock or 12 O'clock because all the hours in the night have the same features till the sun rises.
- (iii) PW-1 saw the occurrence as there was mercury light at the scene of the occurrence and the victim suffered a close range shot and, thus, there could not be any possibility of mistake in their identity.
- (iv) The statement of PW-1 that the shot had been fired from six paces was considered to be a minor contradiction.
- (v) If a witness is related to the victim, he would naturally be interested in ensuring that the real culprit is punished or not screened.
- (vi) The Appellant must have injured the victim with premeditation.

We may at the outset like to observe that the High Court failed to consider that it was dealing with a judgment of acquittal. It failed to address itself the right question, viz., if two views are possible, the appellate court shall not interfere with a judgment of acquittal. The High Court evidently in its judgment failed to take into consideration several relevant factors as was done by the Trial Court. The High Court also failed to consider that the statements of PWs 1 and 2 were disbelieved in relation to three other accused persons. No gun was seized. No cartridge was found at the place of occurrence. The enmity between the parties was admitted. The First Information Report was evidently ante-timed as it could not have been sent to the Circle Officer after four days and to the court of the learned magistrate after eight days.

Investigation of the case was conducted by PW-4 in a slipshod manner. PW-4 did not explain as to why the original general diary was not produced. In terms of the Police Act, a copy of the statement of the First Information Report is required to be handed over to the informant. First Information Report was required to be taken down in the general diary. Production of the general diary was necessary as the First Information Report was said to be ante-timed and ante-dated. The learned Trial Judge categorically opined the same to be so. No explanation has been given as to why the independent witnesses whose statements had allegedly been recorded were not examined. There was no reason as to why the statement of the PW-2 was taken after such a long time although according to the medical report he was not unconscious as would be evident from the fact that his left thumb impression was taken in the hospital register. If PW-2 was taken within a few minutes to the District Hospital, the doctor incharge must have informed the police. The Investigating Officer does not say so. He had not made any attempt to apprehend the culprits immediately. There is absolutely no reason as to why in a case of grave nature, a copy of the First Information Report was sent to the Circle Officer, 4 days after the incident and to the court 8 days thereafter. Section 157 of the Code of Criminal Procedure mandates that the First Information Report should be sent to the nearest magistrate within a period of 24 hours. The incident took place at Gorakhpur which is a District Town. Section 147 of the Police Act and the Rules framed thereunder provide for safeguards for the accused persons from false implication. The legal requirements were not complied with. This Court in *Meharaj Singh v. State of U.P.* [(1994) 5 SCC 188] stated the law, thus:

"FIR in a criminal case and particularly in a

murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8."

[Emphasis supplied]

[See also Budh Singh & Ors. v. State of U.P., JT 2006 (11) SC 503]

In Budh Singh (supra), this Court noticed the regulations framed by the State of U.P. in terms of the Police Act stating:

"The State of U.P. had made regulations in terms of the Police Act, which are statutory in nature. Regulation 97 provides as to how and in what form the information relating to commission of a cognizable offence when given to an officer-in-charge of a police station, is to be recorded. Such a First Information Report, known as chik (check) report, should be taken out in triplicate in the prescribed form and the 'true facts should be ascertained by a preliminary investigation'. In the event a written report is received, an exact copy thereof should be made and the officer-in-charge of the

station is required to sign on each of the pages and put the seal of the police station thereupon. The duplicate copy is to be given to the person who brings the written report and the original thereof must be sent to the Superintendent of Police. Regulation 108 emphasizes the need of maintaining the case diary stating that time and place should be noted in the diary by the Investigating Officer when beginning the investigation; whereafter only, he should inspect the scene of the alleged offence and question the complainant and any other person who may be able to throw light on the circumstances. Regulation 109 provides that the case diary must contain the particulars required by Section 172 of the Code of Criminal Procedure in sufficient detail so as to enable the supervising officer to appreciate the facts."

The High Court failed to analyse the evidences on record. It proceeded to pass its judgment on mere surmises and conjectures.

The High Court did not critically scrutinize the evidence of PWs 1 and 2. Having regard to the facts and circumstances of this case in our opinion the Appellant was entitled to benefit of doubt. [See State of U.P. v. Gambhir Singh and Others, (2005) 11 SCC 271]

It is no doubt true that PW-2 suffered a grievous injury. By reason of the said fact alone, the judgment of acquittal could not have been interfered with by the High Court.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed.