

AFR

Reserved on : 12.03.2019

Delivered on : 06.09.2019

Court No. - 34**Case :-** JAIL APPEAL No. - 4657 of 2003**Appellant :-** Guru Baksh Singh**Respondent :-** State Of U.P.**Counsel for Appellant :-** In Person, From Jail, Noor

Mohammad, Pratap Kanchan Singh, Shiv Vilas Mishra (A.C.), Vinod Kumar Tripathi, Vinod Kumar Tripathi (Ac)

Counsel for Respondent :- Rishi Chadha (A.G.A.)**Hon'ble Sudhir Agarwal, J.****Hon'ble Rajendra Kumar-IV, J.*****(Delivered by Hon'ble Rajendra Kumar-IV, J.)***

1. This Jail Appeal has been filed by accused-appellant Guru Baksh Singh through Senior Superintendent Central Jail, Agra against judgement and order dated 03.08.2002 passed by Additional Sessions Judge, Court No. 8, Meerut in Sessions Trial No.552 of 1999 (State v. Guru Baksh Singh) under Section 302 IPC, Police Station Hastinapur, District Meerut, convicting accused-appellant and sentencing him to undergo life imprisonment and fine Rs. 1000/- and in default of payment of fine, six months additional imprisonment.
2. Factual matrix of the case as emerging from First Information Report (hereinafter referred to as "FIR") as well as material placed on record is as follows.
3. A written report Ex. Ka-1 dated 20.3.1999 was presented by PW-1, Rishipal Singh, Chowkidar of village, getting it scribed by one Rakesh Kumar, in Police Station Hastinapur, District Meerut, alleging that on 19.3.1999 in the evening, Guru Baksh Singh, brother-in-law (Sala) of one Jaswant Singh, along with Jeet Singh

and Teerath Singh came to house of Jaswant Singh at village Sirjepur Patelnagar and after having dinner, they had slept in the house of Jaswant Singh. Next morning, when PW-1 was crossing river Ganga, saw that accused Guru Baksh Singh was abusing his companion Jeet Singh Sardar and saying that he had to see him that day. Thereupon, Teerath Singh pacified them. Thereafter, Jeet Singh (victim) went to take bath. At about 9:00 AM, suddenly, Guru Baksh Singh inflicted many sword blows on Jeet Singh and said that he would not leave him alive. On alarm raised by victim, he and Teerath Singh, rushed to save him but Guru Baksh Singh continuously inflicted blows of sword on victim, as result of which Jeet Singh succumbed to injuries and fell into water. He also raised alarm, on which many people of Sirjepur working in the field, came there. On seeing them coming, Guru Baksh Singh ran away towards western side, but they chased. Guru Baksh Singh was apprehended after applying some force at around 9.15 AM in the jungle of Sirjepur by PW-1 and other persons of village. Dead body of Jeet Singh was kept on the bank of river Ganga by Harvansha (brother of PW-1 and villagers).

4. On the basis of Written Report Ex. Ka-1, PW-7, the then Constable Clerk Vijay Pal Singh registered a chick F.I.R. Ex.Ka-7 as Case Crime No.50 of 1999, under Section 302 IPC against accused. An entry was made in general diary, copy whereof is Ex. Ka-8.

5. PW-5 Ghanshyam Lal Srivastava, on the direction of PW-8, held inquest over the dead body of deceased Jeet Singh, prepared inquest report Ex.Ka-5 and other relevant papers relating thereto.

6. PW-4 Dr. V.P. Gupta conducted autopsy over the dead body of deceased Jeet Singh on 21.3.1999 at about 6:00 PM and prepared post-mortem report Ex.Ka-4 expressing his opinion that death of victim was possible on 20.3.1999 at about 9:00 AM i.e. one and half

days prior to post-mortem due to shock and haemorrhage on account of ante-mortem injuries. Doctor found ante-mortem injuries on the person of deceased as under :-

- (i) Incised wound left side head 5cm x 1 cm x bone cut 8 cm. It is above left ear.
- (ii) Incised wound middle side 6 cm x 1 cm. It is 7 cm above to left ear bone cut.
- (iii) Incised wound on head of 7 cm x 1 cm x bone deep.
- (iv) Incised wound on right forehead 4 cm x 1 cm x bone deep. It is 3 cm above to right eyebrow.
- (v) Incised wound right hand 2 cm x 1 cm x bone deep. It is 6 cm above to right ear.
- (vi) Incised wound on left side neck 8 cm x 1 cm x muscle deep. It is 3 cm below to left ear.
- (vii) Incised wound on neck left side 16 cm x 2 cm x bone deep neck vessel cut with C3 Fracture (cut).
- (viii) Abrasion on left shoulder.
- (ix) Incised wound left back above and 11 cm x 1 cm x bone deep scapula left cut.
- (x) Incised wound on left upper arm 5 cm x 1 cm x muscle deep at middle and out.
- (xi) Incised wound left forearm 5 cm x 1 cm x bone cut on extensor side left forearm. It is 6 cm above to left wrist both lower cut.
- (xii) Incised wound on left wrist 4 cm x 2 cm x bone deep on extensor of left arm.

(xiii) Incised wound right hand side 11cm x 2 cm x bone cut, 3rd, 4th, and 5th metacarpal cut.

(xiv) Contusion on left chest upper and out.

7. PW-8 Rajvir Singh commenced investigation; visited spot; prepared site plan Ex.Ka-9; collected simple and blood stained earth from spot; prepared Fard Ex.Ka-10; recorded statement of witnesses; took sword allegedly used in commission of offence in his possession; prepared memo Ex.Ka-12; and after completion of investigation, submitted charge-sheet Ex.Ka-18 against accused-appellant-Guru Baksh Singh under Section 302 IPC in the Court of Chief Judicial Magistrate who took cognizance of the offence.

8. Case, being exclusively triable by Court of Sessions, was committed to Sessions Court for trial.

9. Trial Court, framed charge against accused-appellant Guru Baksh Singh under Section 302 IPC on 01.09.1999 which reads as under :

आरोप

मैं, दिनेश गुप्ता, अष्टम अपर जिला एवं सत्र न्यायाधीश मेरठ, जनपद मेरठ आप अभियुक्त गुरुबक्श सिंह के विरुद्ध निम्न आरोप लगाता हूँ—

1— यह कि दिनांक 20.3.99 ई० की समय करीब 9 बजे सुबह स्थान जंगल ग्राम सिरजेपुर जिला मेरठ में अन्तर्गत थाना हस्तिनापुर में आपने जीत सिंह को धारदार हथियार तलवार से मारकर चोट पहुँचाकर उसकी हत्या कारित की। आपका यह कृत्य भा०दं०सं० की धारा 302 के अन्तर्गत दण्डनीय अपराध किया। जो इस न्यायालय के प्रसंज्ञान में है।

एतद् द्वारा आपको मैं निर्देश देता हूँ कि उक्त आरोपों के लिये आपका विचारण उक्त न्यायालय द्वारा किया जावे।

Charge

I, Dinesh Gupta, VIII Additional District & Sessions Judge, Meerut, District- Meerut hereby charge you accused Gurubaksh Singh with following charges :-

First - That on 20.3.99, at about 9 o'clock in the morning you committed the murder of Jeet Singh by assaulting and causing injuries to him by a sharp weapon-sword, in the jungle of village Sirjapur, District- Meerut falling under the Police Station- Hastinapur. This act committed by you is an offence punishable under Section 302 I.P.C. and is in the cognizance of this court.

I do hereby direct that you be tried by the said Court for the said charges.

(English Translation By Court)

10. Accused-appellant pleaded not guilty and claimed to be tried.
11. In order to substantiate its case, prosecution has examined as many as eight witnesses and Court itself recorded statements of CW-1 Kanval Jeet Singh, CW-2 Brij Pal Singh, CW-3 Rishi Pal Singh son of Lal Singh, CW-4 Ajab Singh, CW-5 Nandu, and CW-6 Rakesh.
12. PW-1 Rishi Pal son of Kundan, PW-2 Harbansh, CW-1 Kanval Jeet Singh, CW-3 Rishi Pal Singh son of Lal Singh, CW-4 Ajab Singh and CW-5 Nandu are witnesses of fact. Remaining witnesses PW-3 Jagpal Singh, PW-4 Dr. V.P. Gupta, PW-5 S.I. Ghanshyam Lal Srivastava, PW-6 Constable Omvir Singh, PW-7 Constable Vijay Pal Singh, PW-8 S.I. Rajveer Singh, CW-2 Brij Pal Singh and CW-6 are formal witnesses.
13. PW-1 Rishi Pal is Informant and eye witness and PW-2 Harbansh, CW-1, CW-3, CW-4 and CW-5 are also eye witnesses of the incident who supported prosecution case.
14. PW-3 Constable Jagapal Singh proved Ex.Ka-2 and 3, PW-4 Dr. V.P. Gupta conducted autopsy over the dead body of deceased and prepared post mortem report, PW-5 S.I. Ghanshyam Lal Srivastava held inquest and prepared inquest report, PW-6 Constable Omvir Singh is witness of inquest, PW-7 Constable Vijay Pal Singh

registered Chick F.I.R. as Crime No. 50 of 1999 and prepared G.D., PW-8 S.I. Rajvir Singh is Investigating Officer of case and submitted charge sheet against the accused.

15. Statement of accused-appellant under Section 313 Cr.P.C. was recorded by Trial Court explaining all evidence and other incriminating circumstances. Accused denied prosecution case in toto and claimed false implication on account of enmity in the present case. Accused-appellant chose not to adduce any documentary or oral evidence in support of his defence.

16. Sessions Trial ultimately came to be heard and decided by Additional Sessions Judge, Court No.8, Meerut. Trial Court, after hearing learned counsel for parties and appreciating entire evidence on record, found accused-appellant guilty and convicted him as stated above.

17. Feeling aggrieved and dissatisfied with the impugned judgement and order of conviction, appellant has filed this appeal from Jail through Jail Superintendent.

18. We have heard Sri Shiv Vilas Mishra, learned Amicus Curiae appearing for appellant, Sri Rishi Chaddha, learned A.G.A. for State and have travelled through the entire examination record with the valuable assistance of learned counsel for parties.

19. Learned Amicus Curiae appearing for appellant has assailed conviction of accused-appellant, advancing his submissions in the following manner :

(i) Witnesses produced by prosecution are not reliable.

(ii) There is no strong motive to accused-appellant to

commit murder of Jeet Singh.

(iii) Entire witnesses of fact have not been produced by prosecution, therefore, presumption under Section 114 (g) Indian Evidence Act goes against him.

(iv) Medical evidence is not compatible with ocular version.

(v) There are major contradictions in evidence of witnesses rendering prosecution case doubtful.

(vi) Prosecution has not proved its case beyond reasonable doubt and Trial Court did not appreciate the evidence in right perspective and wrongly convicted the accused. Accused-appellant is entitled to benefit of doubt and liable to be acquitted.

20. Learned AGA for State opposed the submissions and stated that accused-appellant is named in F.I.R.; it is a case of day light murder; Independent witnesses have supported prosecution case. Apart from that, CW-1 Kamal Jeet Singh real nephew (Bhanja of accused-appellant) has given statement against him whereas accused has not pointed out any reason as to why he (CW-1) was giving evidence against him. It has further been argued by learned AGA that blood stained sword has also been collected by police and accused was apprehended by public at some distance from the scene of occurrence. Trial Court has rightly convicted accused-appellant and sought dismissal of appeal.

21. Although time, date, place and nature of injuries as well as assassination of victim could not be disputed from the side of accused-appellant but according to Advocate for accused-appellant, he is not responsible for causing death of Jeet Singh. Even otherwise,

from the evidence of prosecution, time, date, place and murder of Jeet Singh stand established.

22. Only question remains for consideration is, "whether accused-appellant committed murder of Jeet Singh and Trial Court has rightly convicted accused-appellant for causing murder of Jeet Singh, an offence punishable under Section 302 I.P.C. or not"?

23. Now, we may proceed to consider rival submissions of learned counsel for the parties and, briefly, evidence of prosecution and some important decisions.

24. PW-1 Rishi Pal, village Chowkidar has deposed that accused-appellant Guru Baksh Singh had come to the house of Jaswant Singh along with Teerath Singh and Jeet Singh and stayed in the night. On the day of incident, he was going across river Ganga to peel sugarcane; when he reached near Ganga, accused-appellant Guru Baksh Singh was abusing in filthy language to Jeet Singh and saying that he would see him that day; Teerath Singh pacified Guru Baksh Singh; thereafter victim Jeet Singh started bathing whereupon accused-appellant Guru Baksh Singh started assaulting Jeet Singh with sword at 9:00 AM; victim Jeet Singh raised alarm (Bachao Bachao); PW-1 and Teerath Singh rushed to save him but Guru Baksh Singh continued assault; and Jeet Singh fell down into water and died. On the noise of witnesses, accused-appellant ran away towards western side of forest. Many persons came there and chased him who was caught by people at 9:15 AM. On being asked by public, he disclosed his identity as Guru Baksh Singh. Dead body of Jeet Singh taken out of water from river. Thereafter, he (PW-1) went to Police Station and presented written report Ex.Ka-1. Incident was witnessed by him, Nandu, Siyaram, Baran Singh and others.

25. PW-2 Harbansh Singh deposed that on the relevant day at about 9:00 AM, he was going across river Ganga from his house for peeling sugarcane. When he reached near bank of Ganga river, noticed that accused-appellant Guru Baksh Singh was attacking Jeet Singh with sword. He raised alarm whereupon Rishi Pal and Nandu also came to the place of occurrence and witnessed incident. Accused-appellant Guru Baksh Singh ran away from the spot leaving Jeet Singh in water. Victim Jeet Singh succumbed to injuries. Witnesses caught accused-appellant Guru Baksh Singh and took out dead body of Jeet Singh from water and kept it on the bank of river Ganga. Accused-appellant Guru Baksh Singh happens to be brother-in-law (Sala) of Jaswant Singh resident of village Sirjepur.

26. CW-1, Kanval Jeet Singh, deposed that three years ago in the evening accused-appellant Guru Baksh Singh, Jeet Singh and Teerath Singh came to his house; accused-appellant Guru Baksh Singh was his real maternal uncle; all three persons slept in the house after taking meal and next morning at about 7:30 AM, they went to river Ganga to take bath; at about 9:00 AM, he was going towards Ganga river; accused-appellant Guru Baksh Singh was running with blood stained sword in his hand; he (CW-1) and other persons coming from behind apprehended Guru Baksh Singh and when inquired what had happened, then he (accused-appellant) himself admitted that he had killed Jeet Singh with sword. They snatched sword from him and handed over to police. S.I. prepared Fard Ex.Ka-12 of sword and he put his signature on Fard. Witness further stated that he and other persons tied accused-appellant with tree near the house of Brijpal and showed the police.

27. CW-3 Rishi Pal son of Lal Singh deposed that he saw accused-appellant Guru Baksh Singh attacking victim Jeet Singh with sword

who was making alarm (*Bachao Bachao*). Rishi Pal, Harbansh, Ajab Singh, Vidya Ram, Pappu and he himself tried to save Jeet Singh but due to fear they could not do so. Accused-appellant ran away towards western. He did not chase the accused.

28. CW-4 Ajab Singh and CW-5 Nandu also supported prosecution case and deposed that they have witnessed the accused, killing Jeet Singh with sword in the water of river Ganga and he ran away from there. Jeet Singh fell down and died in water.

29. The witnesses withstood sufficient cross-examination by defence but unblemished. Nothing material could be brought so as to disbelieve their statement. Although some minor contradictions have appeared but they do not go to the root of case.

30. PW-4 Dr. V.P. Gupta, found fourteen ante-mortem injuries on the person of deceased which might have been caused by sharp edged weapon like sword and all the witnesses of fact supported that Jeet Singh was attacked by accused-appellant with sword. Therefore, evidence of witnesses is compatible with medical evidence.

31. From the statement of PWs-1, 2 and 4 as well as CWs-1, 3, 4 & 5, it has been established that accused-appellant Guru Baksh Singh caused serious injuries to Jeet Singh with sword due to which he fell down in water and succumbed to death. CW-1 Kanval Jeet Singh is real nephew (Bhanja of accused-appellant) who deposed against his real maternal uncle Guru Baksh Singh that he saw accused-appellant running with sword. When he asked accused-appellant what had happened, accused-appellant himself admitted that he killed Jeet Singh with sword whereupon he and other persons chasing him, apprehended accused-appellant, snatched sword and handed over to police. There is nothing on record to show as to why real nephew i.e.

CW-1 would depose against his own maternal uncle. Blood stained sword alleged to be used in the commission of crime, was taken into custody by police from Kanval Jeet Singh (CW-1). Accused-appellant has offered no explanation as to why witnesses deposed against him.

32. So far as argument of learned Amicus Curiae for accused appellant regarding motive is concerned, we are not impressed with the argument for the reasons that it is a case of direct evidence and day light murder where independent witnesses and his real nephew have deposed against accused-appellant Guru Baksh Singh. Thus merely because that there was no strong motive to commit the present offence, prosecution case cannot be disbelieved.

33. In **Lokesh Shivakumar v. State of Karnataka, (2012) 3 SCC 196**, Court held as under :-

“As regards motive, it is well established that if the prosecution case is fully established by reliable ocular evidence coupled with medical evidence, the issue of motive loses practically all relevance. In this case, we find the ocular evidence led in support of the prosecution case wholly reliable and see no reason to discard it.”

34. So far as non-examination of entire witnesses is concerned, in view of Section 134 of Indian Evidence Act, 1872 (hereinafter referred to as 'Act, 1872'), we do not find any substance in the submission of learned counsel for appellant.

35. Law is well-settled that as a general rule, Court can and may act on the testimony of a single witness provided he/she is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of Act, 1872, but if there are doubts about the testimony, Court will

insist on corroboration. In fact, it is not the numbers, the quantity, but the quality that is material. Time-honoured principle is that evidence has to be weighed and not counted. Test is whether evidence has a ring of truth, cogent, credible and trustworthy or otherwise.

36. In **Namdeo v. State of Maharashtra (2007) 14 SCC 150**, Court re-iterated the view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused inspite of testimony of several witnesses if it is not satisfied about the quality of evidence.

37. In **State of Haryana v. Inder Singh and Ors. reported in (2002) 9 SCC 537**, Court held that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused. The testimony of a sole witness must be confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.

38. So far as discrepancies, variations and contradictions in prosecution case are concerned, we have analysed entire evidence in consonance with submissions raised by learned counsel's and find that the same do not go to the root of case and accused-appellant is not entitled to benefit of the same.

39. In **Sampath Kumar v. Inspector of Police, Krishnagiri, (2012) 4 SCC 124**, Court has held that minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and sense of observation differs from person

to person.

40. We lest not forget that no prosecution case is foolproof and the same is bound to suffer from some lacuna or the other. It is only when such lacunae are on material aspects going to the root of the matter, it may have bearing on the outcome of the case, else such shortcomings are to be ignored. Reference may be made to a decision in Criminal Appeal No. 56 of 2018, **Smt. Shamim v. State of (NCT of Delhi)**, decided on 19.09.2018.

41. In **Sachin Kumar Singhraha v. State of Madhya Pradesh** in Criminal Appeal Nos. 473-474 of 2019 decided on 12.3.2019, Supreme Court has observed that Court will have to evaluate evidence before it keeping in mind the rustic nature of depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of witness testimony and the consistency of the prosecution version as a whole.

42. When such incident takes place, one cannot expect a scripted version from witnesses to show as to what actually happened and in what manner it had happened. Such minor details normally are neither noticed nor remembered by people since they are in fury of incident and apprehensive of what may happen in future. A witness is not expected to recreate a scene as if it was shot after with a scripted version but what material thing has happened that is only noticed or remembered by people and that is stated in evidence. Court has to see whether in broad narration given by witnesses, if there is any material contradiction so as to render evidence so self contradictory

as to make it untrustworthy is Minor variation or such omissions which do not otherwise affect trustworthiness of evidence, which is broadly consistent in statement of witnesses, is of no legal consequence and cannot defeat prosecution.

43. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observations, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. Court has to form its opinion about the credibility of witness and record a finding, whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle, but can be one of the factors to test credibility of the prosecution version, when entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statement of a witnesses cannot be dubbed as improvements as the same may be elaborations of the statements made by the witnesses earlier. Only such omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [**Vide: State Represented by Inspector of Police v. Saravanan & Anr., AIR 2009 SC 152; Arumugam v. State, AIR 2009 SC 331; Mahendra Pratap Singh v. State of**

Uttar Pradesh, (2009) 11 SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra, JT 2010 (12) SC 287].

44. In the present case, it is fully established that accused-appellant attacked victim Jeet Singh with sword who sustained serious injuries and succumbed to death on spot. Evidence shows that dead body of deceased was found near the bank of river Ganga at the time of inquest. Medical evidence shows that death of Jeet Singh might have occurred due to ante-mortem injuries at the time, as alleged by prosecution. Accused-appellant in his statement under Section 313 Cr.P.C. has given reply that witnesses gave false statement but he did not suggest anything as to why PW-1, PW-2 and CW-1, 3, 4 and 5 gave false statements against him, therefore, there cannot be any hesitation to come to conclusion that accused committed murder of Jeet Singh by causing several injuries.

45. In view of facts and legal position discussed hereinabove, we find that Trial Court has rightly analyzed evidence led by prosecution and found him guilty and convicted accused for having committed murder of Jeet Singh, an offence punishable under Section 302 IPC. Conviction and sentenced awarded by Trial Court is liable to be maintained and confirmed. No interference is warranted by this Court.

46. So far as question of sentence to accused-appellant is concerned, it is always a matter of discretion to be exercised by Court upon consideration of circumstances aggravating and mitigating in individual cases (see: **Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder vs. Puran, (1990) 4 SCC 731, M.P. v. Saleem, (2005) 5 SCC 554, Ravji v. State of Rajasthan, (1996) 2 SCC 175**]). Considering the facts and

circumstances, weapons used in the commission of offence, sentence awarded by Trial Court is almost minimum. We see no reasons to interfere the same.

47. In view of above discussion, **the appeal lacks merit and is dismissed**. Impugned judgement and order dated 03.08.2002, is maintained and confirmed.

48. Lower Court record along with a copy of this judgment be sent immediately to District Court and Jail concerned for compliance and apprising accused-appellant.

49. Before parting, we provide that Sri Shiv Vilas Mishra Advocate, Amicus Curiae for accused-appellant, shall be paid counsel's fee as Rs. 11,500/- for his valuable assistance. State Government is directed to ensure payment of aforesaid fee through Additional Legal Remembrancer, posted in the office of Advocate General at Allahabad, without any delay and, in any case, within one month from the date of receipt of copy of this judgment.

Order Date :- 06.09.2019.

Manoj