

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 662 OF 2006

SURENDRA PAL & ORS. ... APPELLANTS

VERSUS

STATE OF U.P. & ANR. ... RESPONDENTS

JUDGMENT**B. SUDERSHAN REDDY, J.**

1. This appeal by special leave is directed against the final judgment and order dated 2nd December, 2005 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 4703 of 2004 whereby the Hon'ble High Court dismissed the appeal preferred by the appellants and thereby maintaining the conviction of the appellants under Section 302 of the Indian Penal Code (for short

'IPC') with modification of sentence of death by substituting it to imprisonment for life. The conviction and sentences awarded by the learned Additional Sessions Judge, Fast Track Court No. 4, Meerut against the appellants for the offences punishable under Sections 147, 148, 307 read with 149, IPC have been confirmed. Hence this appeal.

2. The main question that arises for our consideration in the instant appeal is whether the courts below committed any serious error in convicting the appellants for the offence punishable under Section 302? Whether the courts below committed any error in convicting the appellants for the offences punishable under Sections 147, 148, 307 read with Section 149? Whether the findings concurrently recorded by the courts below to convict the appellants under the said provisions are so perverse and ex-facie unacceptable and therefore require our interference in this appeal preferred with leave granted under Article 136 of the Constitution of India?

3. It is fairly well settled and needs no restatement that this Court should not embark upon a reappraisal of the evidence, when both the Sessions Court and the High Court have agreed in their appreciation of the evidence and arrived at concurrent findings of fact. This Court time and again held that it is always necessary to bear in mind the limited scope of the proceedings under Article 136 of the Constitution of India which cannot be converted into a third appeal on facts. Mere errors in appreciation of the evidence are not enough to attract this Court's 'invigilatory jurisdiction'. It is settled law that this Court may interfere in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice.
4. We shall bear this settled legal position in mind and proceed to consider whether the findings of fact reached by the courts below concurrently on appreciation of evidence suffer from any error of law or have resulted in

miscarriage of justice requiring our interference in this appeal. Whether the view taken by the High Court on reappraisal of the evidence to agree with the appreciation of evidence by the Sessions Court is so perverse resulting in miscarriage of justice.?

5. In all there were 11 accused sent up for trial before the learned Sessions Judge, the Sessions Court, however, acquitted five accused and found them not guilty of charges framed against them. Accused Rajneesh is absconding. Accused Aman Singh did not file any appeal. Hence, in this appeal, we are concerned with conviction and sentence of only the present appellants i.e. accused nos. 1 to 4.

BACKGROUND FACTS

6. The prosecution case in short is that an incident occurred on the intervening night of 24/25th May, 1999 at about 12 O' clock in Lalpur village, Police Station Bhawanpur, District Meerut. It is the case of the prosecution

that on that intervening night the appellants along with other accused and two unknown persons armed with country made pistols and rifle came to the village demanding Ajab Singh (one of the deceased) to enter into a compromise with regard to a case lodged by Ajab Singh complaining about his daughter's abduction on 5.11.1997 by Rajneesh and Vikram. The said case was pending in a court. Apart from that case, some other cases were also pending between the parties. Ajab Singh did not agree for the proposal and enraged by adamant attitude of Ajab Singh, the accused all of a sudden started indiscriminate firing from their weapons resulting in death of Ajab Singh, Hari Singh @ Hariya and Geeta. Raj Pal (PW-3), Veer Singh (PW-2) and Bala (PW-4) received injuries. The accused threatened Kripal (PW-1) to kill him but he saved himself by hiding in a room of his house. Aman Singh (A-5) threatened that nobody should go to the police station and lodge any complaint and if any one dares to do so would also be killed. Kripal Singh (PW-1) lodged the report in the early morning

at about 5.00 A.M in the Police Station which is at a distance of about 4 kms. from the scene of occurrence. After the registration of the first information report, Hukum Singh, SHO, recorded the statement of the informant at the police station and thereafter reached the place of occurrence. On his instructions Sub-Inspector - Sripal Singh (PW-13) prepared the inquest memos. Recovery memos of blood stained and plain earth, empty cartridges and bullets were also prepared. Site plan is exhibited as Ka-17. The statements of inquest witnesses were recorded. The statements of injured PWs -2, 3 and 4 were recorded at Lokpriya Hospital. Thereafter the investigation was taken up by Jai Dev Arya (PW-11) and upon completion of the investigation a charge sheet was filed against the appellants.

7. The post mortem on the dead bodies of Ajab Singh, Smt. Geeta and Hari Singh was conducted by Dr. K.N. Tiwari (PW-8). He found the following ante-mortem injuries on the person of the deceased Ajab Singh:

1. Gun shot wound of entry 2 cm x 1 cm on the back of chest Rt. side 7 cm below angle of scapula and 3 cm Rt. to midline, margins inverted an area of blackening & tattooing 15 cm x 11 cm around wound present, direction of wound is towards Lt. Bullet recovered from Lt. Side neck.

2. Gun shot would of entry Rt. side chest interiorly 1 cm. medial to Rt. nipple 1 cm x 1 cm margins inverted, an area of blackening & tattooing of 8 cm x 7 cm. present around wound. Direction of wound is towards chest cavity. Bullet recovered from post chest wall.

3. Gun shot wound of entry 1.5 cm x 1.5 cm on Rt. side neck 1 cm below Rt. ear lobule at 6 O'clock position. Margins inverted an area of blackening & tattooing 5 cm x 4 cm around wound is present. Bullet recovered from substance of liver.

He also conducted post-mortem examination on the body of Geeta and noted the following ante-mortem injuries:

1. Gun shot wound of entry 1 cm x 1 cm on outer aspect of Lt. upper arm 3 cm below top of shoulder, margins inverted, an area of blackening and tattooing 4 cm x 3 cm seen around wound. Wound is directed medially and continuous with inj. No. 2.

2. Gun shot wound of exit 1.5 cm x 1 cm on medial aspect of Lt. shoulder 2 cm below top of shoulder, margins inverted. Wound is continuous

with inj. No. 1. One bullet recovered from post abd. wall in relation with inj. No. 4.

3. Gun shot wound of entry 4 cm x 4 cm Lt. side head over upper half of Lt. ear. An area of blackening tattooing 6 cm x 6 cm around wound is present hair singing seen. Wound is cranial cavity deep. One bullet recovered from cranial cavity.

4. Gun shot wound of entry on ant. Abd. wall 1 cm x 1 cm, below phisternum and 1 cm Lt. to midline an area of blackening & tattooing 4 cm x 3 cm around wound present. Wound is abd. cavity deep.

He also found the following injuries on the body of Hari Singh:

1. Gun shot wound of entry on back of abdomen 2 cm x 1 cm 27 cm below C 7 just Lt. to midline, abraded, cavity deep, margins inverted, tattooing in an area of 8 cm x 6 cm present around wound. One bullet recovered from ant. abraded wall.

2. Gun shot wound of entry 1.5 cm x 1.5 cm on Lt. side forehead 3 cm above & lateral to outer border of Lt. eyebrow, margins inverted an area 4 cm x 4 cm of blackening and tattooing seen around wound. Wound is crania cavity deep. One bullet recovered from cranial cavity.

In the opinion of the Doctor the cause of death of each of the deceased was due to haemorrhage and shock as a result of injuries sustained by them.

Dr. Vinod Kumar (PW-6) had medically examined Smt. Bala on 25.9.1999 and noted the following injuries on her person:

1. A lacerated wound of size 3 cm x 1 cm just above the Pubic symphysis fresh bleeding present.
2. A lacerated wound of size 2 cm x 1 cm over at the outer aspect of the (r) Arm fresh bleeding present margins inverted. This is 12 cm above the elbow joint.
3. A lacerated wound of size 2.5 cm x 1 cm over medial aspect of (r) arm 10 cm above the elbow joint.

He also examined Veer Singh (PW-2) and noted the following injuries on his person:

1. Pt. G/C V. Poor Pt. In Hypovolumic shock, pains present all over the abdomen.
2. A fire arm wound of size 4 cm x 2.5 cm present over (1) back of abdomen with Irregular inverted margins, bleeding from the wound present. Blackening and Tattooing present around the wound.

The following injury on Raj Pal (PW-3) were noted by him:

- 1 An abrasion of size 4 cm x 1 cm present over the (r) lower chest just above the (r) lowest costal margin.

8. The prosecution in order to establish its case had altogether examined 13 witnesses amongst whom Kripal Singh (PW-1), Veer Singh (PW-2), Raj Pal (PW-3) and Smt. Bala (PW-4) are the eye witnesses to the occurrence. PW-1 is the first informant and rest of them are injured persons. The whole prosecution case turns upon the evidence of PWs-1 to 4. The courts below did not find any reason whatsoever to disbelieve their evidence. The courts found that there is nothing on record to disbelieve their presence at the scene of offence. The courts have meticulously examined and assessed their evidence and found the same to be acceptable. On a careful consideration of the impugned judgment of the High Court we have found that the conclusion to which the High Court reached at against the

appellants is well sustained on the evidence on record which requires no interference.

9. However, it will be appropriate for us to consider the main submissions canvassed by Shri Dinesh Dwivedi, learned senior counsel for the appellants. He submitted the following points for our consideration:

- I. There was inordinate delay in lodging the report and the FIR itself came into existence after consultations and deliberations. It was prepared in the police station itself. This itself makes the whole prosecution case suspicious and therefore it cannot be said that the prosecution has proved the case beyond reasonable doubt.
- II. The police did not record the names of the accused in the inquest report that was prepared at the earliest point of time. There is no explanation as to why PW 1,

Kirpal Singh, did not disclose the names of all the accused at the time of preparation of inquest.

III. That all the eyewitnesses are close relatives to the deceased and therefore, they are interested witnesses, whose testimony cannot be relied on and made the sole basis to hold the petitioners guilty of the charged offences.

IV. The source of light mentioned in the FIR is moonlight and as well as electric bulb. The Investigating Officer had mentioned the electric bulb at place 'B' in the site plan. But there was no electricity connection to the deceased Ajab Singh's house. The witnesses could not have identified the appellants in the dead of the night.

10. The learned counsel for the State supported the judgment and submitted that the concurrent findings of facts arrived at by the Courts below are based on appreciation and reappraisal of evidence which cannot normally be interfered with by this Court in exercise of its jurisdiction under Article 136 of the Constitution. There are no

exceptional and extraordinary circumstances requiring any such interference in the present case.

11. Point I : The incident had taken place in the midnight at about 12 O Clock. The report was lodged by Kirpal Singh (PW 1) in the early morning at about 5.30 a.m. in the police station which is at a distance of about 4 or 5 kilometers from the place of occurrence. Be it noted, three persons in the family were killed by a group of persons armed with deadly weapons. The entire village was terror stricken. One does not expect that under those circumstances someone to rush to the police station and lodge the first information report. PW1 (Kirpal Singh) in his evidence in clear and categorical terms stated that at the relevant time, he was present in his house situated in Lalpur, the deceased Ajab Singh was none other than his nephew, his house is adjacent one to that of deceased Ajab Singh's. He clearly identified the appellants who were armed with deadly weapons and seen them committing the murderous attack on the deceased. He was also threatened by the appellants and he saved himself by

hiding in a room in his house. In the first information report itself it is stated that Ajab Singh's daughter, Kumari Manju was abducted by Rajneesh (absconding) with the help of his uncle Vikram; the abducted girl was recovered by the police and handed over to deceased Ajab Singh. She was brought to Meerut for her medical examination where she had committed suicide. The origin that led the present incident is traceable to abduction of deceased Ajab Singh's daughter. The appellants came to insist that Ajab Singh should withdraw the said case and enter into a compromise to which he refused.

Be it noted, the first information report was lodged within 5 to 5½ hours immediately after the incident which by no stretch of imagination could be characterized as the delayed one. Not only three persons died on the spot but PWs 2, 3 and 4 were also seriously injured. In the circumstances, we are not inclined to agree with the submissions made by the learned senior counsel that there was unexplained delay in lodging the first information

report. Yet another aspect of the matter: The first information report was not signed by PW 1 (Kirpal Singh). It was scribed by one Ramveer on his dictation. The fact remains that the report was received by the Station House Officer and the FIR was issued immediately thereafter. It is of no consequence whether the first information report contained his signature or not. There is no material available on record to arrive at any conclusion that the first information report lodged by PW 1 itself was after some deliberations and consultations in the police station. There is no such case made out by the appellants. In the circumstances, it is not possible to agree with the submissions made by the learned senior counsel that FIR was lodged after consultations and deliberations.

The evidence of PW 1 is clear and categorical which depicts the sequence of events. The Courts below rightly placed reliance upon his evidence. An attempt was made before us to point out certain minor discrepancies in his evidence to impeach the testimony but in our opinion, the

minor inconsistencies, if any, are not of that nature which makes us to disbelieve his evidence. The whole narration of the incident is natural, the deceased Ajab Singh was none other than the nephew of PW 1, living adjacent to his house, his presence at the relevant time is also natural and there is nothing to disbelieve that he knew all the appellants herein who participated in the attack in which three persons died on the spot and PWs 2, 3 and 4 had received serious injuries.

12. Point II : It appears from the record that the names of the accused and details of weapons possessed by each one of the accused who participated in the assault are not mentioned in the inquest report. The panchayatnamas (Ext. K 25 to K 27) dated 25th May, 1999 were prepared in between 6.30 a.m. to 9.30 a.m. over the dead bodies of the three deceased individuals. The inquest reports were dispatched along with the copy of the first information report. PW 1 (Kirpal Singh) who is the first informant and eyewitness to the incident is also one of the witnesses to the

inquest reports. The first information report was available with the investigating officer at the time of preparation of the inquest reports. The mere fact that PW 1 did not repeat the names of all the accused so as to be incorporated in the inquest reports, in our considered opinion, is of no consequence. The purpose of preparation of inquest report is to ascertain whether a person has died in some suspicious circumstances or an unnatural death and as to the apparent cause of death. The inquest report need not contain the details as to how the deceased were assaulted or who assaulted them. The omission of names of the accused and the minute details of assault in the inquest report itself is not enough to disbelieve the prosecution case. It is fairly well settled and needs no restatement at our hands that the purpose of holding an inquest is very limited, viz; to ascertain as to whether a person has committed suicide or has been killed by any other or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. Section 174

of the Code of Criminal Procedure does not mandate the investigating officer to mention the names of the assailants in the inquest report. There is no other provision in law or practice requiring the purpose to mention the names of the assailants and weapons possessed by them in the inquest report. The omission thereof does not lead to any inference to doubt the prosecution case. Such omissions are not fatal to the prosecution case. It is settled principle that merely because the witnesses on the inquest report who are also eyewitnesses did not give out the name of the accused persons while describing the cause of death in the inquest report does not render the presence of the eyewitnesses on the spot doubtful [see ***Suresh Rai Vs. State of Bihar, (2000) 4 SCC 84; Eqbal Baig Vs. State of A.P. (1986) 2 SCC 476***]. It is unnecessary to further dilate on this particular aspect of the matter. In the circumstances, we are not inclined to agree with the submission that PW 1 was not an eyewitness to the incident.

13. Point III: It is true, PW 1 and PWs 2 to 4 and as well as the deceased are closely inter related. PW 2 is Veer Singh who stated in his evidence that deceased Ajab Singh was his maternal uncle. It is in his evidence that he was on the fateful night sleeping under the neem tree and nearby the deceased Ajab Singh and his wife Bala, grandfather Hari Singh and Rajpal were also sleeping. The appellants and other accused along with two unknown persons reached there and all of them were armed with country made pistols and one of the unknown persons was armed with a rifle. It is in his evidence that he could recognize each one of the appellants and other accused in the moonlight and electric light. His version is more or less same as that of PW 1 who also speaks about the appellants insisting the deceased Ajab Singh to compromise the abduction case, deceased Ajab Singh told them that they could talk about it in the morning but Aman Singh (A 5, who did not prefer any appeal against his conviction) insisted for a compromise then and there. Enraged by the same, the appellants started indiscriminate

firing resulting in the death of Hari Singh, Ajab Singh and Geetha on the spot. He himself was injured along with PWs 3 and 4.

PW 3 is one Rajpal who is also an eyewitness to the occurrence. Ajab Singh was his nephew, he also speaks about origin of the case that ultimately led to the attack on the deceased and corroborates the version given by PWs 1 and 2 in all its respects.

PW 4 is Smt. Bala who is none other than the wife of deceased Ajab Singh. She was sleeping on the Chabutra on that fateful night along with her daughter Geetha and husband Ajab Singh. She speaks about the appellants' presence at the scene of offence and their insisting for a compromise in the abduction case. She specifically speaks about the appellants' participation in the crime and indiscriminate firing by the appellants resulting in death of her husband Ajab Singh, daughter Geetha and father-in-law Hari Singh. It is in her evidence that PW 2 Veer Singh, PW 3

Rajpal also received injuries along with her at the hands of the accused.

There cannot be any iota of doubt that PWs 1, 2, 3 & 4 are natural witnesses to the occurrence. The mere fact that they are related to each other itself is no ground to discard their evidence unless something critical is brought to our notice that all of them being interested witnesses were speaking falsely to implicate the appellants. Who else would have been present at the scene of occurrence except PWs 1 to 4? What is unnatural in the evidence of PWs 1 to 4 to disbelieve their evidence? None. It is true that the evidence of relatives of the deceased is to be carefully scrutinized and appreciated before resting the conclusions to convict the accused in a given case. In the present case, the Sessions Court properly appreciated the evidence and meticulously analyzed the same and the High Court upon reappraisal of evidence concurred with the view taken by the Sessions Court. Moreover, the very fact that PWs 2 to 4 were injured in the incident establishes their presence at the scene of

offence. We do not find any reason to disbelieve their evidence only on the ground that they are interrelated to each other and also to the deceased.

14. Point IV : This aspect of the matter has been dealt with elaborately by the Courts below. PW 1 stated in the first information report itself that he had seen and identified the accused persons in the moonlight and "in the light of electricity". There is no dispute whatsoever that the appellants and other accused barring two were all previously known to PWs 1 to 4. The occurrence did not take place all of a sudden. The accused after reaching the spot insisted for a compromise of a previous case, obviously some exchange of words took place between the deceased and the accused and the parties must have come close to each other. The appellants were not strangers to any of the witnesses. The evidence of PWs 1 to 4 is consistent with what has been stated by PW 1 in the very first information report that the accused were identified in the moonlight and electric light. In the site plan also, the existence of electric bulb at place

'B' is shown. In this regard the trial Court dealt with the matter very elaborately and observed:

"...And at place 'B' the bulb is stated and this house is of PW-1 Kirpal Singh and where the position of the bulb is shown the Chabutara of the occurrence is situated just in front of in after the way (rad) towards north side. Therefore, to identify in one light of this bulb is quite natural and there is no contradiction in the statement of any of the witnesses on this point. All the witnesses have stated to have identified the accused in the electric light and moon light. Also otherwise, the houses of accused persons are situated beside the house of victim party, after the raasta and are of the same village. Therefore, under such circumstances, even in less and dim light to identify the accused persons is quite natural".

That apart it is not even suggested by the defence that there was no moon light whatsoever on that fateful night. For the aforesaid reasons, we find no merit in the contention urged by the learned senior counsel for the appellants. The High Court has on reappraisal of the evidence concurred with that finding recorded by the learned Sessions Judge. We are not inclined to

interfere with the concurrent finding of fact arrived at by the Courts below.

15. No other point is urged.

16. For all the aforesaid reasons, we find no merit in this appeal. The appeal is accordingly dismissed.

.....J.
(B. SUDERSHAN REDDY)

.....J.
(SURINDER SINGH NIJJAR)

New Delhi,

September 16, 2010.

JUDGMENT