



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1981 OF 2014

SANJU AND OTHERS APPELLANTS

VERSUS

STATE OF UTTAR PRADESH RESPONDENT

JUDGMENT

SANJIV KHANNA, J.

The impugned judgment dated 18th December 2012 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 5036 of 2005 upheld the conviction of Bhagwati Singh and his three sons, Bhoop Singh, Balwant Singh and Sanju Singh, for murder of Chandrapal Singh outside his residence in Village Sahnaul, District Aligarh, Uttar Pradesh, on 11th August 2003 at about 4:30 p.m. The appellants have been sentenced, for the offence under Section 302 of the Indian Penal Code, 1860¹, to imprisonment for life and fine of Rs.5,000/- and in default of payment of fine to undergo simple

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Reason:

¹ For short, 'IPC'

imprisonment for one month. The appellants have also been convicted under Section 307 of the IPC for attempt to murder the brother of the deceased Chandrapal Singh, namely, Rakesh Kumar, who is also the informant and has deposed as PW-1. The appellants have been sentenced to rigorous imprisonment for seven years with fine of Rs.3,000/- and in default of payment of fine, additional simple imprisonment for fifteen days for the offence under Section 307 of the IPC. The sentences are to run concurrently.

2. Having considered the evidence on record, for the reasons stated below, we are inclined to uphold the conviction, *albeit* we would discard and not rely upon the testimony of Ramphal Singh (PW-2), as an eye witness to the occurrence.
3. The appellants have questioned the place of occurrence as well as the presence of Rakesh Kumar (PW-1) at his home located in Village Sahnaul, District Aligarh, Uttar Pradesh, on 11th August 2003. These facts, in our opinion, are not only proved from the testimony of Rakesh Kumar (PW-1), but are also established from the depositions of Special Sub-Inspector² Veerpal Singh (PW-6)

² For short, 'SSI'

and Dr. Anil Kumar Purwani (PW-5) who had conducted the medical examination of Rakesh Kumar (PW-1) on 12th August 2003 and had deposed about the injuries caused on his body.

4. Rakesh Kumar (PW-1) has testified that, on the date of the incident, he had come to his village from Aligarh, where he and his brother were working, on account of the *Rakshabandhan* festival. They had reached the house separately, within 5-10 minutes, as deceased Chandrapal Singh had gone to drop his children to his in-laws' house. At about 4:30 p.m. on 11th August 2003, the appellants had come to their house. Bhagwati Singh was armed with a *lathi* while the three brothers were armed with country-made pistols. Bhagwati Singh had asked deceased Chandrapal Singh as to why he had stored bricks on his land. He had also hurled abuses at Chandrapal Singh. Chandrapal Singh had replied that he would remove the bricks in 2-3 days, but Bhagwati Singh was not convinced by the explanation and consequently raised an alarm calling other appellants to fire and kill Chandrapal Singh. Bhoop Singh had then fired a shot at Chandrapal Singh with the country-made pistol. Balwant Singh and Sanju had also fired at Rakesh Kumar (PW-1) with their country-made pistols, but the latter managed to save himself by taking shelter behind a wall. Rakesh Kumar (PW-1) did

not receive any firearm injury, but when he had tried to run inside his house, he was assaulted by Bhagwati Singh with the *lathi*. Chandrapal Singh died on the spot. Before his death, he had taken two-three steps from the place he had received a bullet injury and then fell on the ground. The blood had spilled at that place where he fell. Rakesh Kumar (PW-1) had proceeded to the Police Station, Atrauli, Uttar Pradesh, where his statement (Exhibit Ka-1) was recorded and the First Information Report (FIR) No. 136 dated 11th August 2003 (Exhibit Ka-2) was registered. The FIR mentions the names of the four appellants as the perpetrators. It states that the deceased Chandrapal Singh had died due to firearm injury and that the informant, that is, Rakesh Kumar (PW-1), had also suffered injuries inflicted by *lathi*.

5. Rakesh Kumar (PW-1) was subjected to a very lengthy cross-examination, and was questioned on the motive or the reason for the occurrence. He has deposed that the bricks were brought by his brother Chandrapal Singh, but Rakesh Kumar (PW-1) could not tell how many days before the occurrence the bricks were brought, as he resided in Aligarh due to his job, and the bricks were stored near the village well on the land of the *Gram Sabha*. Relying on the cross-examination, during the course of arguments, it was

suggested that the site plan/spot map, relied upon by the prosecution, marked as Exhibit Ka-12, did not show the location of the well or the stored bricks. In our opinion, the argument does not have any merit as the written complaint (Exhibit Ka-1) does refer to the well and states that the bricks were stored on the platform of the well, which existed on the *Gram Sabha/Samaj* land, but does not state that the well was located near the house. The questions put to Rakesh Kumar (PW-1) have been answered with great clarity and conviction. Rakesh Kumar (PW-1) deposed that the police station was located at a distance of 6-7 kilometres from his village. They had left the village at about 5:30 p.m. on 11th August 2003 to reach the police station. There, they met the SSI Veerpal Singh (PW-6), and the written complaint (Exhibit Ka-2) was given. They returned from the police station to the house, and at about 12:00 midnight, they had proceeded to Atrauli Hospital, where Rakesh Kumar (PW-1) had got his medical examination conducted. The dead body of Chandrapal Singh was also taken to Aligarh, located at a distance of 32-33 kilometres from the village, and the post-mortem examination was conducted. At the end of the lengthy cross-examination, the defence gave two suggestions to Rakesh Kumar (PW-1). First, that Rakesh Kumar (PW-1) had been called from Aligarh to the police station to make a report, which Rakesh

Kumar (PW-1) categorically denied as incorrect. He has denied that the complaint against the appellants was false. Secondly, it was suggested that Rakesh Kumar (PW-1) was not medically examined. Rakesh Kumar (PW-1) denied that there was no medical examination and that he had shown fake/self-inflicted injuries.

6. Dr. Anil Kumar Purwani (PW-5), who had examined Rakesh Kumar (PW-1) on 12th August 2003, has deposed that Rakesh Kumar (PW-1) had as many as six injuries, which included one lacerated wound and five contusions. The injuries were simple in nature and could have been caused by a hard blunt object. The injuries could have been caused in the preceding 12 hours, and thus, might have been caused on 11th August 2003 at about 4:30 p.m.
7. The death of the deceased Chandrapal Singh by a firearm injury is not disputed and is proven by the post mortem report (Exhibit Ka-10), and *vide* deposition of Dr. Hira Singh (PW-4), who had conducted the post mortem on 12th August 2003 at 3:30 p.m. in the District Hospital, Aligarh. He has testified, and as per the post mortem report (Exhibit ka-10), the death of Chandrapal Singh was due to shock and haemorrhage as a result of the ante-mortem injuries inflicted by a firearm. Dr. Hira Singh (PW-4) has testified

about the entry and the exit wound on the front and backside of the left side chest of Chandrapal Singh.

8. Learned counsel for the appellants has submitted that empty cartridges were not found at the spot and have not been exhibited. This is correct. However, Veerpal Singh (PW-6) has deposed that on 11th August 2003 he was posted as SSI at Police Station, Atrauli and the investigation of the case was handed over to him. On the same day, he had visited the place of incident and had prepared the site map of the incident, which was marked Exhibit Ka-12. He had prepared the seizure report of the blood-stained and plain earth bearing his signatures, which was marked Exhibit Ka-9. The place of incident was located at a distance of 5-6 kilometres from the police station. With reference to the site map (Exhibit Ka-12), Veerpal Singh (PW-6) had identified and demarcated the place from where the blood-stained earth was collected. It was a rough surface of concrete. Blood had also spilled on open soil.
9. What is clear from the above deposition is that there was a time gap between the actual occurrence and the visit of the police to the place of incident. By that time, the villagers had collected at the spot, a factum which has been deposed to by Rakesh Kumar (PW-1), wherein he has stated that the villagers saw the police taking

the dead body 2 hours after the incident. This was not controverted and challenged in the cross-examination. Disappearance of the empty cartridges can be explained, as a number of villagers had gathered on the spot and had access to the place of occurrence. Further, the place of occurrence cannot be challenged on this ground. There is overwhelming evidence to establish that the place of incident was outside the residence of the deceased Chandrapal Singh and his brother Rakesh Kumar (PW-1).

10. Ramphal Singh (PW-2) has similarly deposed and stated that the police arrived around 7:00-8:00 p.m. and several persons had gone along with the dead body. He had also deposed that he was an eye-witness who had seen the appellants and was a witness to the firing. However, in his cross-examination, he accepted that the Sub-Inspector³ had not recorded his statement and he had not informed the SI that Bhoop Singh had shot at Chandrapal Singh. Further, he had not told the SI that he had reached the spot after hearing a noise and had seen the dispute between the appellants, deceased Chandrapal Singh and Rakesh Kumar (PW-1). As per Veerpal Singh (PW-6), Ramphal Singh (PW-2) was a signatory to the *panchnama* (Exhibit Ka-9), but Veerpal Singh (PW-6) had neither

³ For Short, 'SI'

recorded the statement of Ramphal Singh (PW-2) nor asked him whether he was an eye-witness. Ramphal Singh (PW-2) did not tell Veerpal Singh (PW-6) anything with regard to his being an eye-witness. It appears that Ramphal Singh's (PW-2) statement under Section 161 of the Code of Criminal Procedure, 1973, on his being an eye-witness, was recorded as late as 2nd September 2003, which is nearly 20 days after the occurrence. The spot map/site plan (Exhibit Ka-12) does not mention the location of the house of Ramphal Singh (PW-2). We would, therefore, discard and not take into account the testimony of Ramphal Singh (PW-2) as a purported eye-witness. However, for the reasons stated above, we are of the view that we can rely upon the testimony of Rakesh Kumar (PW-1) to affirm the conviction of the appellants, which has been proved and established beyond reasonable doubt.

11. Recording the aforesaid, the appeal is dismissed. The appellant Bhoop Singh, who was released on bail pursuant to the order of this Court dated 9th September 2014, as he had already suffered incarceration for 11 years, shall surrender within one month from the date of pronouncement of this judgment. In case he fails to surrender, the authorities shall take steps in accordance with law to take him into custody for undergoing the sentence. The other

appellants are incarcerated and would, therefore, undergo their sentence. We are not interfering or modifying the order of sentence.

.....J.
(SANJIV KHANNA)

.....J.
(BELA M. TRIVEDI)

**NEW DELHI;
AUGUST 29, 2022.**