

Court No.45

Case :- CRIMINAL APPEAL No. - 2163 of 1983

Appellant :- Ram Babu

Respondent :- State of U.P.

Counsel for Appellant :- D.S.Tiwari

Counsel for Respondent :- D.G.A.

Hon'ble Siddhartha Varma, J.

Hon'ble Ram Manohar Narayan Mishra, J.

(Per : Siddhartha Varma, J.)

1. This criminal appeal has been filed against the judgment and order dated 23.05.1983 passed by the Sessions Judge, Jalaun at Orai by which the appellant Ram Babu was convicted under Section 302 of the Indian Penal Code (*henceforth called the "IPC"*) read with Section 201 IPC and punished the appellant under Section 302 IPC with life imprisonment and under Section 201 IPC with a rigorous imprisonment of two years.

2. The brief facts of the case are that upon an incident which allegedly occurred on 21.8.1982 at around 7.30 to 8.00 PM, a First Information Report (*henceforth called the "FIR"*) was lodged in that regard on 22.11.1982 at 7.05 AM. As per the FIR, the brother of the first informant namely Jagram, who was gambling with the accused persons Ram Babu and Kisna, was killed in the house of Ram Babu because the deceased Jagram had won in the gambling and Ram Babu and Kisna had asked for the return of their money. When Jagram had refused to return that

money, then, it is alleged, the accused persons Ram Babu and Kisna had killed the deceased. It has been stated that Kisna had used an axe to kill the deceased while Ram Babu was responsible for throttling the deceased. As per the FIR, when Jagram shouted upon being attacked at 8.00 pm, then Laxman Singh and Mulayam Singh had seen the incident in the light of their torches. It has been stated in the FIR itself that the dead body of Jagram, after he was killed, was dragged by the assailants and taken to a well which was situated in the land of one Sri Dixit and that the assailants had thrown the dead body into the well.

3. The FIR was scribed by Mulayam Singh on the dictation of the first informant Takdeer Singh. Upon the FIR having been lodged, the police got into action and investigation commenced. The panchayatnama proceedings which commenced at around 11.15 am on 22.11.1982 states that the Constable Prem Shanker Shukla reached the spot and he after seeing the trail which had been created because of the pulling of the dead body by the accused towards the well had traced out the dead body. It has been stated that thereafter the panchayatnama was prepared and completed at 12.30 PM. The memo Ka-1 as was prepared by the investigating police had stated that they had only seen the torch of Mulayam Singh which had three cells in it. The police had also taken it into its custody. The police had also recovered a Sadari and Angochha (the clothes worn by the deceased) which were blood stained which were exhibited as Exhibit Ka-2. As per the

Exhibit Ka-3 which was the memorandum prepared by the police, the plain soil and the blood stained soil were taken into custody. After the panchayatnama was completed, the dead body was sent for post mortem and the post mortem report was prepared on 23.11.1982. The investigation having got completed, the police submitted its report. Since the accused Kisna was absconding, charges were framed only viz.-a-viz. Ram Babu under section 302/201 IPC. When the accused pleaded not guilty, trial commenced.

4. The prosecution produced five witnesses in the Court.

5. PW-1 was the first informant Takdeer Singh. In his testimony before the Court, he has stated that Kashi Singh and Harmohan Singh had seen his brother Jagram gambling. It has been stated by the PW-1 that Kashi Singh and Harmohan Singh in fact had asked his brother not gamble but neither did Jagram nor did the assailants Ram Babu and Kisna stop gambling. He has stated that when the sun set and it became dark, the three who were gambling, came out on the western side to gamble and when Jagram had won a substantial amount of money, then Ram Babu and Kisna asked him to return the money. When, however, Jagram refused to return the money then Kisna assailed him by an axe while Ram Babu had throttled the deceased. Upon being attacked when the deceased started shouting, then Laxman Singh and Mulayam Singh who were easing themselves in the open agricultural field saw the incident in the light of their torches. In

the examination in chief, the PW-1 has stated that Kisna and Ram Babu had pulled the dead body down to the well and had thrown the dead body in there. PW-1 has stated that he was at his house and when he heard the shouting, then he had also reached the spot and over there Laxman Singh and Mulayam Singh had narrated the incident to him and had told that Kisna and Ram Babu had killed the brother of the PW-1. He has also stated that when the two eye-witnesses namely Laxman Singh and Mulayam Singh were following the accused persons, they heard a sound which clearly meant that the dead body had been thrown into the well. However, because of the fear of the accused persons, it has been stated in the examination in chief, the two eye-witnesses and the PW-1, did not go near the well. He has stated that the FIR was scribed by Mulayam Singh on his dictation and whatever he had told, was scribed by Mulayam Singh in the FIR. In the cross examination, he has stated that he had not seen the two accused persons and the deceased actually gambling. He has only stated that when he had reached the spot then Kisna and Ram Babu, the accused persons, had pulled the dead body of the deceased towards the well. He has also stated that when he had reached the place of incident then Mata Prasad, Jahar Singh, Mukat Singh, Ram Babu son of Kandhai, Vasdev and a few others had reached the place of incident. He has stated that they were all without any arms etc. He has also stated that the well was situate in the south-west of the village. The house of the accused Ram Babu was in

the western direction of the village whereas the house of the first informant was in the northern direction. At the time of the incident, in the house of Ram Babu where gambling was going on, the wife of the accused Ram Babu, his two sisters and two younger brothers were also staying with him and at the time when the gambling was going on, they were all present in the house. He has emphatically stated that since he was not there at the place of incident, he had no knowledge of the entire incident. He has stated that on the next date at around 7.00 AM he had gone to the police station to lodge the report. He has also in the cross-examination, upon a question being asked as to whether he tried to search out the dead body of Jagram, he had categorically stated that he had not tried to search out the dead body. In fact, he has stated that he had not even gone near the well. He has stated that the entire FIR was scribed with the help of Mulayam Singh at his house. After the FIR was lodged, the police had come to the spot at around 8.00 AM and had got the dead body pulled out from the well. Upon a further question being asked as to whether the accused Ram Babu was into the business of crackers, he told that he was not aware. He has also categorically stated that for the first time, he saw the dead body when the same was pulled out from the well. He has very categorically stated that the well, situate in the land of Sri Dixit, was around 250 steps away from the agricultural fields of Mulayam Singh. He has also stated that Laxman Singh and Mulayam Singh were not his family.

6. PW-2 was Kashi Prasad son of Gyan Singh who had stated that he had seen the deceased and the two accused gambling in the room of Ram Babu. He has stated that he had not actually entered the place where gambling was going on but while passing through the house of Ram Babu, he had seen the three i.e. the deceased Jagram and the two accused were playing cards and he assumed that they were gambling.

7. PW-3 was the eye-witness Mulayam Singh. He is also the scribe of the first information report. He had stated that he was easing in the fields at around 8.00 PM and when he heard some noises from the southern side of the village, then with the help of his torch, he saw that the accused Ram Babu and Kisna were beating up Jagram. He had stated that Laxman Singh, the another eye-witness, was also near him. When the sounds were heard of beating etc., Laxman Singh had enquired as to what was going on and to this, the accused persons had threatened the two eye-witnesses with dire consequences. He has stated that he had seen the accused persons dragging the dead body towards the well. However, since it was night, they had gone to their houses. He has also stated that the FIR was written by him on the dictation of Takdeer Singh and had proved the FIR which was Exhibit Ka-1. In the cross-examination, he has stated that the FIR was written by him on the dictation of Takdeer Singh and whatever Takdeer Singh had dictated, he had written. He had also very categorically stated that in between the incident which had occurred and the

lodging of the FIR, he had not talked to Takdeer Singh. He has, upon a question being asked as to whether both, he himself and Laxman Singh were easing themselves at a close distance, he had, at one point, stated that Laxman was easing himself in the fields of Ramdayal and then he had stated that in fact Laxman was easing himself in the fields of Santram Mishra and thereafter he had stated that he was around 4-6 steps away from him. He has stated that Laxman Singh had reached the fields to ease himself before he had gone. After they had eased themselves, they heard the sounds which were created because of the scuffle which was going on between the deceased and the accused persons. He has stated that the place of incident was around 30-40 steps away from the place where they were easing themselves. He has thereafter upon a question being asked as to whether he had seen the entire incident from where he was easing himself, he had replied that in fact he had not seen the incident from the place where he was easing. He further stated that when he had reached the place where Laxman Singh was easing himself, then from there he had seen the incident which was around 25 steps away from the place of incident. He has again stated that he had not brought the torch which he was using on that date. He has also stated that the axe was being used by Kisna whereas the other accused Ram Babu had actually throttled the deceased to death.

8. PW-4 is the eye-witness, Laxman Singh and he, in his examination-in-chief, has stated that he had known Ram Babu,

the accused, from before. He has also stated the same story with regard to the fact that he had seen the incident from a distance while he had gone to ease himself in the late hours of 21.11.1982. He has stated that in fact he had seen Kisna assailing the deceased by an axe and Ram Babu throttling the deceased to death and he had also stated in his examination-in-chief that the accused persons were making it clear that if anybody went near them then they would also be done to death. He has stated that he had also seen the accused persons dragging the dead-body of Jagram. He has also stated that when a hue and cry was raised by the eye-witnesses then Rajendra, Takdeer Singh, Bhagirath, Samrath Singh and a few others had also reached the place of incident. He has stated that he had himself told about the entire incident to the first informant, Takdeer Singh. He has also stated that when they had followed the accused persons then they had heard something been thrown into the well and thereafter they had stopped the pursuit of apprehending the accused persons. In the cross-examination, he has stood affirm with what he had stated in the examination-in-chief. When a question was being asked as to whether there was any enmity between the PW-3 and the deceased because of some business of crackers etc., then he had denied the same. He has stated that his torch had got damaged and, therefore, he had not brought it. He had also stated that when the dead-body was being dragged towards the well, he himself alongwith 10-15 people had followed the accused persons. After

they had tried to follow the accused for around a furlong, they had dropped the idea as it was a dark night. He has also stated that the well was around two furlong away from the agricultural fields of Mulayam Singh.

9. PW-5 Kailash Nath Tiwari was the Investigating Officer who had scribed the chick and had also proven the same.

10. Thereafter, the statement of the accused, Ram Babu was recorded under Section 313 Cr.P.C. and he had denied that he was not responsible for the crime.

11. Upon the conclusion of the trial, when the Sessions Judge, Jalaun at Orai on 23.05.1983 convicted the accused Ram Babu under Section 302 read with Section 201 IPC and punished the appellant under Section 302 IPC with life imprisonment and under Section 201 IPC with a rigorous imprisonment of two years, the instant Criminal Appeal was filed.

12. Sri Rajiv Nayan Singh, who was appointed as an Amicus Curiae to argue the case on behalf of the appellant, has argued that the appellant Ram Babu was innocent. He has made the following submissions :-

(i) Learned Amicus Curiae has submitted that the FIR was an ante-dated one. He has submitted that in the FIR itself the first informant had made a statement that the dead-body was thrown into the well and this he had stated on the information being given by Mulayam Singh and Laxman Singh. However, learned Amicus Curiae has drawn the

attention of the Court to the Panchayatnama which is annexed at page no. 30 of the paper book and he has read out the statements made in the Panchayatnama that the Constable Prem Shankar Shukla had come to the spot and he upon tracking down till the well with the help of the marks which were made on the ground because of the dragging of the dead body, had found out the body. Learned Amicus Curiae, therefore, states that it was for the first time that the dead-body was traced out i.e. when the Police Official Prem Shankar Shukla had come to the village. Learned Amicus Curiae states that wrongly in the FIR, it had been stated that the first informant was aware of the fact that the dead-body had been dragged down from the place of incident to the well. Learned Amicus Curiae states that it was for the first time, the prosecution had got information as to where exactly the body was lie when the Police had come and had tracked down the dead body with the help of the marking which was there on the ground which started from the alleged place of incident and ended at the well and, therefore, learned counsel for the appellant states that it was impossible for the first informant to have known at the alleged time of lodging the FIR that he had known about the fact that the dead-body was thrown into the well. Had the FIR been in existence then the Police which had come on 22.11.1982 after the lodging of the FIR

at 07:05 AM, would not have endeavoured to search out the dead-body. They would have, as per the first informant, immediately reached the well which was situate in the fields of Sri Dixit and would have found out the dead-body. Learned Amicus Curiae further states that if the FIR was being scribed on the dictation of the first informant Takdeer Singh by Mulayam Singh, then the language as was there in the FIR would have been slightly different. In the FIR, the eye-witness Mulayam Singh who himself had scribed the FIR, would not have contained such averments which were being known for the first time by the eye-witness Mulayam Singh.

- (ii) Learned Amicus Curiae further states that Mulayam Singh who was an educated person and had known about the incident on the night of 21.11.1982, would not have waited till the next day for the brother of the deceased to have got the FIR lodged. He would himself have reached the Police Station and would have lodged the FIR.
- (iii) Learned Amicus Curiae further states that no material relating to the incident was at all found. The torch was nowhere to be seen. The playing cards, which allegedly were being used for gambling, were also not recovered.
- (iv) Learned Amicus Curiae has thereafter stated that the PW-3 and PW-4 were also not the eye-witnesses. They were only chance witnesses. To bolster his case, learned Amicus

Curiae has stated that a chance witness is such a witness who is only planted by the prosecution to prove a point. In the instant case, if the eye-witnesses had been there on the spot and had they seen the incident, as they had narrated in the statement-in-chief before the trial Court, then they would themselves have taken action upon seeing the murder having taken place in the village but since they had actually not seen the incident, they were planted by the prosecution to only prove the point that the implicated persons had actually committed the murder. Learned Amicus Curiae relied upon a decision of the Supreme Court in **(2023) 2 SCC 352 : Manoj and Ors. vs. State of U.P.** and has submitted that a chance witness cannot be taken to be a reliable witness and, therefore, the testimony of a chance witness could not be in any manner used to convict the accused. Learned counsel for the appellant states that as per the law laid down by the Supreme Court a testimony of a chance witness should be utilised by the prosecution very cautiously. He submits that the evidence of the chance witness requires a very cautious and strict scrutiny and if there was any slackness in the explanation about the presence of the chance witness at the place of incident then his deposition ought to be rejected. Since learned counsel for the appellant relied heavily on paragraphs 102, 103 and 104 of the judgment reported in

(2003) 2 SCC 353 : **Manoj & Ors. vs. State of Madhya**

Pradesh, the same are being reproduced here as under :-

"102. A chance witness is one, who appears on the scene suddenly. This species of witness was described in *Puran v. State of Punjab (AIR 1953 SC 459)*, in the following terms:

“Such witnesses have the habit of appearing suddenly on the scene when something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence.”

103. This court has sounded a note of caution about dealing with the testimony of chance witnesses. In *Darya Singh v. State of Punjab (AIR 1965 SC 328)*, it was observed that:

“...where the witness is a close relation of the victim and is shown to share the victim’s hostility to his assailant, that naturally makes it necessary for the criminal courts examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence.....If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised.”

104. In *Jarnail Singh v. State of Punjab [(2009) 9 SCC 719]* again, this Court held that:

“22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh (1997) 4 SCC 192 30, Harjinder Singh v. State of Punjab (2004) 11 SCC 253, Acharaparambath Pradeepan and Anr. v. State of Kerala (2006) 13 SCC 643 and Sarvesh Narain Shukla v. Daroga Singh (2007) 13 SCC 360*). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded

(vide *Shankarlal v. State of Rajasthan (2004) 10 SCC 632*)."

Since the learned counsel for the appellant also relied upon paragraphs 22 to 24 of the judgment reported in **(2016) 16 SCC 418 : Harbeer Singh vs. Sheeshpal & Ors.**, the same are being reproduced here as under :-

"22. The High Court has further noted that there were chance witnesses whose statements should not have been relied upon. Learned counsel for the respondents has specifically submitted that PW5 and PW6 are chance witnesses whose presence at the place of occurrence was not natural.

23. The defining attributes of a "chance witness" were explained by Mahajan, J., in *Puran v. State of Punjab, AIR 1953 SC 459*. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.

24. In *Mousam Singha Roy v. State of W.B., (2003) 12 SCC 377*, this Court discarded the evidence of chance witnesses while observing that certain glaring contradictions/omissions in the evidence of PW 2 and PW 3 and the absence of their names in the FIR has been very lightly discarded by the courts below. Similarly, *Shankarlal v. State of Rajasthan, (2004) 10 SCC 632* and *Jarnail Singh v. State of Punjab, (2009) 9 SCC 719*, are authorities for the proposition that deposition of a chance witness, whose presence at the place of incident remains doubtful, ought to be discarded. Therefore, for the reasons recorded by the High Court we hold that PW5 and PW6 were chance witnesses and their statements have been rightly discarded."

Similarly, paragraphs 20 to 23 of the judgment of the Supreme Court in **Jarnail Singh & ors. vs. State of Punjab** reported in **(2009) 9 SCC 719** are also being reproduced here as under :-

"20. After considering the oral as well as documentary evidence on record, the High Court came to the conclusion that the statement of Gurcharan Singh (PW-18) in respect of the fact of hatching of a conspiracy by Balbir Singh and Gurdip Singh, at the Bus-stand Bassi Pathana on 21-6-2000 at 7.30/8.00 p.m. was not worthy of credence. Gurcharan Singh (PW-18), a chance witness could not explain under what circumstances he was present at the bus-stand at the said time.

21. In *Sachchey Lal Tiwari v. State of U.P. (2004) 11 SCC 410*, this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and passerby had deposed that he had witnessed the incident, observed as under:

"If the offence is committed in a street only a passer-by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there."

The Court further explained that the expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh (1997) 4 SCC 192*; *Harjinder Singh v. State of Punjab (2004) 11 SCC 253*; *Acharaparambath Pradeepan & Anr. v. State of Kerala (2006) 13 SCC 643*; and *Sarvesh Narain Shukla v. Daroga Singh and Ors. (2007) 13 SCC 360*). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide *Shankarlal v. State of Rajasthan (2004) 10 SCC 632*).

23. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (vide *Thangaiya v. State of Tamil Nadu (2005) 9 SCC 650*). Gurcharan Singh (PW-18) met the informant Darshan Singh (PW-4) before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW-18) and Darshan Singh (PW-4). The fact of conspiracy has not been mentioned in the

FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned."

Paragraph 10 of the judgment reported in **1976 Criminal L.J. 1568 : Bahal Singh vs. State of Haryana** is also being reproduced here as under :-

"10. As to the presence of P. Ws. 4 and 5 at the time and place of occurrence the trial Court entertained grave doubts. If by coincidence or chance a person happens to be at the place of occurrence at the time it is taking place, he is called a chance witness. And if such a person happens to be a relative or friend of the victim or inimically disposed towards the accused then his being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible or unbelievable but does require cautious and close scrutiny. In the instant case, P.Ws. 4 & 5 were agnatic relations of the deceased-one of them a close one. The reason given by them for being at the place of occurrence did not appear to be true to the trial Court. There was not any compelling or sufficient reason for the High Court to differ from the evaluation of the evidence of the two chance witnesses. It may well be as remarked by the High Court that the respondent was also their collateral but they appeared to be partisan witnesses on the side of the prosecution and hence their testimony was viewed with suspicion by the trial Judge."

13. Sri Amit Sinha, learned Additional Government Advocate has, however, supported the judgment of the trial court and submitted that the case was that of a direct evidence based on the eye-witness account of PW-3 and PW-4 and the eye-witness account could not be done away lightly.

14. Having heard Sri Rajiv Nayan Singh, learned Amicus Curiae and Sri Amit Sinha, learned Additional Government Advocate, we find upon the assessment of all the evidence that

definitely the FIR was an ante-timed FIR. Had the prosecution known about the fact that the dead-body had been dragged from the spot 'B' and 'C', as had been given in the site plan, to the village well marked as point 'F' which was around 440 yards (two furlongs) away, then there was absolutely no requirement for the Investigating Police to have come to the spot after the FIR was lodged and thereafter searched for the dead-body as had been stated in the inquest report. Further we are of the view that had the incident which has been narrated in the FIR been definitely witnessed by the eye-witnesses, then the FIR itself would have been lodged only under Section 302 IPC and there would not have been any doubt with regard to the fact as to where the dead-body had been thrown and, therefore, the FIR would not have been lodged under Section 201 IPC.

15. In the instant case, we do not hesitate to conclude that till such time as the Police had come, it was not known to anyone as to where the dead-body was and after the investigation had taken place and Police had recovered the dead-body, the FIR was lodged and, thereafter, pursuant to a definite conference between the first informant and the Police, the accused appellant was named in the FIR. It is just possible that there was some dispute with regard to some accounting with regard to the cracker business which was being done by the deceased and therefore, the first informant and the two eye-witnesses namely Laxman Singh and Mulayam Singh had ganged together to implicate the

appellant in the instant case. We are definitely of the view that when all the eye-witnesses were mentioning that quite a few people of the village had collected at the place of incident and in fact PW-1 had taken the names of Mata Prasad, Jahar Singh, Mukut Singh, Ram Babu Singh S/o Kandhai, Vasdev and other villagers and PW-4 had taken the names of Rajendra, Takdeer Singh, Bhagirath, Samrath Singh but none of these villagers who were as per PW-1 and PW-4, eye-witnesses present had come to the witness box. We do find that Mulayam Singh, Laxman Singh and the first informant though were not of the same family but definitely were close to each other and, therefore, they had ganged together to implicate the accused, Ram Babu. Further, we are of the view that when the investigation was being done and it was alleged that gambling was done with the help of playing cards then at least an effort ought to have been made to recover the playing cards and to keep them in police custody. Neither the playing cards had been taken into custody nor any of the torches in the light of which the incident was seen, were taken into custody.

16. We are definitely, therefore, of the view that there are any number of lapses in the prosecution story and the prosecution case thus becomes doubtful. Also, we find that nowhere was the currency etc., which it was alleged was won in the gambling by the deceased, recovered.

17. Under such circumstances, the charges as were framed against the accused appellant were not proved beyond reasonable doubt and, therefore, the accused cannot be held guilty and, therefore, we acquit him of all the charges levelled against him.

18. The appeal therefore, stands allowed. The impugned judgment and order dated 23.05.1983 passed by the Sessions Judge, Jalaun at Orai is set-aside. The appellant, Ram Babu, is on bail. He need not surrender. The sureties and the bail bonds are discharged.

19. We do appreciate the hard work done by the learned Amicus Curiae Sri Rajiv Nayan Singh and provide that he would be paid a fee of Rs.25,000/- by the High Court Legal Services Authority. The Registrar General of this Court to see that this order for the payment of the fee to the learned Amicus Curiae is complied with.

Order Date :- 20.09.2024
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(Siddhartha Varma, J.)

(R.M.N. Mishra, J.)