

2022 LiveLaw (SC) 234

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
INDIRA BANERJEE; V. RAMASUBRAMANIAN
MARCH 02, 2022**

CRIMINAL APPEAL No. OF 2022
(Arising out of SLP (Crl.) No.717 of 2020)

KARAN SINGH *Versus* THE STATE OF UTTAR PRADESH & ORS.

Criminal Trial - The prosecution is required to prove its case beyond reasonable doubt and not beyond all iota of doubt. (Para 46)

Criminal Trial - The court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. [Referred to *Rohtash Kumar v. State of Haryana (2013) 14 SCC 434*]

Summary: Appeal against High Court judgment upholding conviction of accused in a murder case - dismissed - The prosecution proved its case beyond reasonable doubt - The fact that the trial/appeal should have taken years and that other accused should have died during the appeal cannot be a ground for acquittal.

(Arising out of impugned final judgment and order dated 30-07-2018 in CRLA No. 1813/1983 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. Ekansh Agarwal, Adv. Mr. Sanjeev Agarwal, AOR

For Respondent(s) Mr. Sanjay Kumar Tyagi, AOR Mr. Prabhat Kumar Rai, Adv. Mr. Ajay Kumar Pandey, Adv. Mr. Jagjit Singh Chhabra, AOR

J U D G M E N T

Indira Banerjee, J.

Leave granted.

2. This Appeal is against a judgment and order dated 30th July 2018 passed by a Division Bench of the Allahabad High Court, dismissing Criminal Appeal No. 1813 of 1983 filed by the Appellant along with other accused persons, against a judgment and order of conviction dated 1st August 1983 passed by the VI Additional District and Sessions Judge, Shahjahanpur in Sessions Trial No. 268 of 1981, *inter alia*, convicting the Appellant of the offences under Section 302 read with Section 149, Section 307 read with Section 149 and Section 148 of the Indian Penal Code (hereinafter referred to as “the IPC”) and sentencing him, *inter alia*, to life

imprisonment for offence punishable under Section 302 read with Section 149 of the IPC.

3. It appears that the Appellant had been granted bail by the Trial Court by an order dated 13th June 1980. The High Court also granted bail to the Appellant during the entire period of the appeal. The Appellant was taken into custody on 9th September 2019 after dismissal of his appeal by the High Court.

4. It is the case of the Prosecution that on 8th April 1980, at about 12:15 P.M., one Rati Pal arrived at Kaanth Police Station and filed a complaint alleging that eight days before Holi, one Rajkumar Singh had purchased a buffalo from his elder brother Brahmopal Singh at the price of Rs. 1,900/-.

5. The said Rajkumar had promised to pay the price of the buffalo to the complainant's elder brother, Brahmopal Singh, eight days after Holi.

6. Rajkumar Singh, however, did not pay the price of the buffalo to the complainant's elder brother, Brahmopal Singh as promised. Brahmopal Singh did not permit Rajkumar Singh to harvest his crops.

7. On 7th April 1980, Rajkumar Singh asked Brahmopal Singh to come to Simra Khera the next day, that is, 8th April 1980, to collect his money.

8. On 8th April 1980, the complainant's cousin brother, Mahendra Singh came to the complainant's house and asked Brahmopal Singh to go to Simra Khera with him to collect his money from Rajkumar Singh after settling accounts with him. Thereafter, the complainant's brother-in-law (Shreepal Singh), Brahmopal Singh, the complainant, a villager Badshah Singh and Mahendra Singh went to Simra Khera. They went to the house of Sher Singh Thakur and sat on a cot in the sitting area.

9. Mahendra Singh called Rajkumar Singh, who came with a rifle in his hand along with the Appellant, Karan Singh, who was also armed with a rifle, Sukhlal armed with a single barrel gun, Jagdish Singh armed with a single barrel gun, Harpal Singh armed with a single barrel gun and Nankoo Singh armed with a double barrel gun.

10. At about 9:00 A.M., Brahmopal Singh asked for his money. Harpal Singh asked Rajkumar Singh to discharge his debt to Brahmopal Singh as soon as possible. At this, Rajkumar Singh opened fire with his rifle and shot Brahmopal Singh. The bullet hit his head. Brahmopal Singh fell down unconscious.

11. Thereafter, the associates of Rajkumar Singh, that is, Harpal Singh, Karan Singh, Jagdish Singh, Sukhpal Singh and Nankoo Singh opened fire from their respective weapons. After the associates of Rajkumar Singh opened fire, the complainant, Badshah Singh, Shreepal Singh and Mahendra Singh ran away from the spot. Out of the shots fired from the side of the accused, one shot hit Mahendra Singh. The

complainant and other eyewitnesses ran into Sher Singh Thakur's house. When they returned to the place of occurrence, they found Brahmopal Singh dead.

12. After the FIR was lodged, the Investigating Officer investigated the case and after completion of investigation submitted chargesheet against the accused persons Rajkumar Singh, Harpal Singh, Jagdish Singh, Karan Singh, Sukhlal Singh and Nankoo Singh under Sections 148, 302/149 and 307/149 of the IPC.

13. The Fifth Prosecution Witness (PW5) Dr. P. K. Gupta who had conducted the post mortem examination of the dead body of the deceased found several gunshot injuries on the body.

14. The Appellant and other accused persons were tried by the Sessions Court. The prosecution examined six witnesses, namely, the first Prosecution Witness, Dr. R.N. Rastogi (PW1), Rati Pal Singh (PW2), Shreepal Singh (PW3), Mahendra Singh (PW4), Dr. P.K. Gupta (PW5) and the Investigating Officer (IO) Jagdish Singh (PW6).

15. By a judgment and order dated 1st August 1983, the Trial Court convicted the accused persons, inter alia, for murder and sentenced them, inter alia, to undergo life imprisonment.

16. The Trial Court found the testimonies of the eye-witnesses were reliable. The Trial Court further found there was motive to kill the deceased and this was proved by the witnesses produced by the Prosecution. All accused persons had come to the spot with deadly weapons with intention to kill the deceased. All the accused had fired on the deceased with their firearms, as a result of which the deceased had sustained 16 bullet injuries.

17. As observed above, the Appellant along with other convicted persons filed Criminal Appeal No. 1813 of 1983 which has been dismissed by the High Court by the judgment and order under appeal. While the appeal was pending before the High Court, five out of six accused persons died. Only the Appellant is alive.

18. The High Court did not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence, which could tilt the balance in favour of the Appellant. The High Court observed that minor discrepancies and/or improvements and/or embellishments were insignificant and ought to be ignored in view of the overwhelming corroborative evidence of the other witnesses.

19. Mr. Ajit Kumar Sinha, learned Senior Counsel appearing on behalf of the Appellant submitted that the police recovered two articles which were produced in evidence. They produced blood-stained clothes of the injured witness Mahender Singh marked as Exhibit Ka-13 and the blood-stained mud and normal mud recovered from the alleged site of the incident which is marked as Exhibit Ka-12. Mr. Sinha argued that there was no recovery of the weapon of crime.

20. The 11 exhibits tendered in evidence were (i) Medical Report of injuries sustained by the injured witness Mahender Singh, (ii) The complaint made by the complainant to the Investigating Officer, (iii) Post Mortem Report of the deceased, (iv) Pallets recovered from the body of the deceased, (v) Incident Report entered by the constable on the basis of the FIR, (vi) Case diary submitted by the I.O., (vii) Panchnama etc., (viii) Site plan of the place of occurrence, (ix) Sample of blood-stained mud and normal mud collected from the site by the I.O., (x) Blood-stained clothes of the injured witness Mahender Singh and (xi) Chargesheet drawn by the police upon conclusion of investigation, as is evident from the records.

21. The Prosecution, as observed, had examined six Prosecution Witnesses namely, Dr. R.N. Rastogi (PW1), Ratipal Singh (PW2), Shreepal Singh (PW3), Mahendra Singh (PW4), Dr. P.K. Gupta (PW5) and Jagdish Singh (Investigating Officer).

22. Mr. Sinha submitted that it was the case of the Prosecution that there was dispute between the prime accused Rajkumar Singh and the deceased Brahmapal Singh over the price of buffalo for which Brahmapal Singh stopped Rajkumar Singh from harvesting his crops. There was no dispute or enmity between the Appellant and the deceased.

23. Mr. Sinha further argued that it has been alleged that of the six accused persons, Rajkumar Singh and Karan Singh were carrying rifles with them, the others carried single/double guns. However, the witnesses did not see any of the other accused persons except Rajkumar Singh firing at the deceased. There is, therefore, no eye-witness against Karan Singh.

24. Mr. Sinha argued that no weapon alleged to have been used by the Appellant was either recovered or produced by the police in course of trial. Mr. Sinha argued that the main injured witness Mahendra Singh had testified that he had not seen the Appellant at the spot when the incident took place. The Prosecution has not declared this witness hostile but relied upon on his evidence.

25. Mr. Sinha further argued that it is alleged that injured witness Mahender Singh is a relative of the Appellant Karan Singh. This is contrary to the admission of the complainant as contained in the FIR itself. Mr. Sinha argued that Mahender Singh is not a relative of Karan Singh but a close relative of Rati Pal and Brahmapal Singh.

26. Mr. Sinha further argued that medical examination of the injured witness Mahender Singh and the post mortem report of the deceased Brahmapal Singh revealed that all the injuries inflicted on both the persons were gunshot injuries. No injury has been caused from the rifle. The body of the deceased contained pellets fired from the gun. There is no injury caused by bullets fired from rifle.

27. Mr. Sinha argued that the Investigating Officer had stated that there was no recovery of any empty cartridge or bullet from the site. No scattered gun pellets were

recovered from the site. There was no witness from the village even though the village had a population of 700-800 people. The villagers had only stated that they had heard of the incident.

28. Mr. Sinha argued that the Trial Court had in its judgment recorded that *“since Raj Kumar fired a shot from rifle & his companions were armed with guns, therefore the witnesses got panicked & they never tried to know the truth that whether in reality the bullet of rifle ever hit Brahmopal or not. The best witness to state this reality could have been deceased Brahmopal himself that whether the bullet fired by Rajkumar ever hit him or not, or did he fell on the takht just because he got panicked since the bullet merely travelled from near his head. Since Brahmopal is dead therefore in this situation there is no witness left to prove this fact that whether the bullet fired by Rajkumar ever hit Brahmopal or not. Therefore, even in this situation where there is no injury mark of bullet rifle on the head of deceased Brahmopal, no effect is caused on the case of the prosecution because under panic nobody is in this situation where he can assess the reality.”*

29. According to Mr. Sinha, this establishes that the conviction made by the Trial Court was only based on assumption/presumption. Mr. Sinha argued that all the prosecution witnesses namely, PW2, PW3 and PW4 had stated that, as soon as the first shot was fired by Rajkumar Singh from his rifle towards Brahmopal Singh, they all ran away with their back towards the accused and they did not see who had fired but had nevertheless heard gun shots. Hence, none of the witnesses had deposed as to which of the accused was involved in firing apart from Rajkumar Singh.

30. Mr. Sinha argued that the Trial Court erred in holding that the aforesaid material factors were minor contradictions and minor lapses on the part of the Prosecution and proceeded to convict all the accused persons guilty beyond doubt. Mr. Sinha argued that the Trial Court had completely ignored the chain of evidence to wrongly conclude that the accused persons were guilty, particularly the Appellant Karan Singh.

31. Mr. Sinha further argued that as per settled law, the doctrine of severability does not apply in the case of a statement of a witness in a criminal trial. Either the whole statement has to be discarded by declaring the witness hostile or else the entire statement has to be relied upon. In this context Mr. Sinha cited **Palvinder Kaur v. State of Punjab, AIR 1952 SC 354** and **Hanumant Govind Nargundkar v. State of Madhya Pradesh, AIR 1952 SC 343**. In **Palvinder Kaur** (supra) this court held that a statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed. In **Hanumant** (supra) this Court held:-

“...It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission

must be used either as a whole or not at all. If the statement of the accused is used as a whole, it completely demolishes the prosecution case and, if it is not used at all, then there remains no material on the record from which any inference could be drawn that the letter was not written on the date it bears.”

32. The judgments of this Court in **Palvinder Kaur** (supra) and in **Hamunant** (supra), which pertain to confession and/or admission are distinguishable on facts. On the other hand, in **Mrinal Das and Others v. State of Tripura, AIR 2011 SC 3753**, this Court held that it is well settled that in a criminal trial, credible evidence of even hostile witnesses can form the basis of conviction.

33. Mr. Sinha also referred to **Navaneethakrishnan v. State By Inspector of Police, (2018) 16 SCC 161**, where this Court re-affirmed: -

“...every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible.”

34. Mr. Sinha concluded by submitting that the Prosecution has failed to prove Appellant’s guilt beyond reasonable doubt. There were clear discrepancies in evidence visible on the face of the record. The appeal therefore ought to be allowed.

35. On the other hand, on behalf of the State, Mr. Sanjay Kumar Tyagi, Advocate on Record, submitted that this Court should not interfere with a concurrent finding of the Trial Court and the High Court.

36. On post mortem, the dead body of the deceased was found to have a large number of gun shots, multiple shot wounds. Some bullets penetrated and exited the body. The injured Mahender Singh had medically been examined by Dr. R. N. Rastogi, who had found gunshot wounds, pellet injuries etc.

37. Mr. Tyagi argued and rightly that the Prosecution case was proved from the statements of three eye witnesses namely, Rati Pal (PW2), Shivpal (PW3) and Mahender Singh (PW4), apart from PW1 being the Doctor who had examined injured witnesses and PW5 being the Doctor who had conducted the post mortem.

38. As argued by Mr. Tyagi, there may have been some minor discrepancies in the evidence of the PW’s. However, all material particulars have been corroborated. PW2 and PW3 more or less corroborated the prosecution story. They both said that the Appellant Karan Singh was there at the place of occurrence with a rifle. They said the accused Raj Kumar Singh opened fire first, after which all the others started firing. PW2 said he did not actually see the others firing, but he heard the sound of firing from which he knew that the others were firing bullets. However, PW2 categorically stated that all the others had opened fire. When the accused opened fire all these

three PWs ran away. They went inside the house of Sher Singh. When they came out after a few minutes they found Brahmopal dead. PW4, Mahender Singh, the injured witness has not, however, named Karan Singh. No question was put to him as to whether he had seen Karan Singh.

39. PW1, Dr. R.N. Rastogi who had examined Mahender Singh said that he had been hit on the back. This tallies with the version of the PWs that he was hit by bullet while they were all running away. PW5, being the Doctor who conducted the post mortem on the body of the deceased said he found gunshot injury on the center of the forehead, 3 centimetre above the nose. Many bones of the head were fractured. He described various other gunshot wounds. There were multiple gunshot wounds. There were also gunshot wounds of exit of bullets apart from gunshot wounds of entry. The thigh bone was fractured. Upon internal examination, brain was ruptured, right and left membrane were ruptured, lungs were ruptured. 45 pellets, small and large were recovered. The Doctor opined that the cause of death was bleeding and shock caused by the injuries. He opined that all the injuries were sufficient to cause death.

40. The tenor of the evidence of the Doctor who conducted the post mortem tends to support the case of the prosecution witnesses that all the accused persons, who were present, carrying arms had fired. The injured witness Mahender Singh may not have specifically named the Appellant Karan Singh. However, two of the other eye-witnesses, that is, PW2 and PW3 confirmed that he was present at the place of occurrence and was carrying rifle. PW3 had seen the Appellant Karan Singh fire.

41. From the evidence of Mahender Singh, PW-4, it appears that no specific question was put to him as to whether the Appellant was present at the place of occurrence or not. This Court, in **Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434** held:-

“24. ... The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness...”

42. Referring to **Narayan Chetanram Chaudhary and Another v. State of Maharashtra, AIR 2000 SC 3352** Mr. Tyagi argued that minor discrepancies caused by lapses in memory were acceptable, contradictions were not. In this case, there was no contradiction, only minor discrepancies.

43. In **Kuriya and Anr. v. State of Rajasthan, (2012) 10 SCC 433** this Court held:

“30. *This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis*

for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in *Kathi Bharat Vajsur v. State of Gujarat*, (2012) 5 SCC 724; *Narayan Chetanram Chaudhary v. State of Maharashtra*, (2000) 8 SCC 457; *Gura Singh v. State of Rajasthan*, (2001) 2 SCC 205 and *Sukhchain Singh v. State of Haryana*, (2002) 5 SCC 100.

31. What is to be seen next is whether the version presented in the Court was substantially similar to what was said during the investigation. It is only when exaggeration fundamentally changes the nature of the case, the Court has to consider whether the witness was stating the truth or not. [(Ref. *Sunil Kumar v. State (Govt. of NCT of Delhi)*] (2003) 11 SCC 367.

32. These are variations which would not amount to any serious consequences. The Court has to accept the normal conduct of a person. The witness who is watching the murder of a person being brutally beaten by 15 persons can hardly be expected to state a minute by minute description of the event. Everybody, and more particularly a person who is known to or is related to the deceased, would give all his attention to take steps to prevent the assault on the victim and then to make every effort to provide him with the medical aid and inform the police. The statements which are recorded immediately upon the incident would have to be given a little leeway with regard to the statements being made and recorded with utmost exactitude. It is a settled principle of law that every improvement or variation cannot be treated as an attempt to falsely implicate the accused by the witness. The approach of the court has to be reasonable and practicable. Reference in this regard can be made to *Ashok Kumar v. State of Haryana*, (2010) 12 SCC 350 and *Shivlal v. State of Chhattisgarh*, (2011) 9 SCC 561.”

44. In ***Shyamlal Ghosh v. State of West Bengal*, (2012) 7 SCC 646** this Court held:

“46. Then, it was argued that there are certain discrepancies and contradictions in the statement of the prosecution witnesses inasmuch as these witnesses have given different timing as to when they had seen the scuffling and strangulation of the deceased by the accused. Undoubtedly, some minor discrepancies or variations are traceable in the statements of these witnesses. But what the Court has to see is whether these variations are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution.

49. It is a settled principle of law that the court should examine the statement of a witness in its entirety and read the said statement along with the statement of other witnesses in order to arrive at a rational conclusion. No statement of a witness can be read in part and/or in isolation.

We are unable to see any material or serious contradiction in the statement of these witnesses which may give any advantage to the accused.”

45. In Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434 this Court held:-

“24. ... The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness...”

46. As argued by Mr. Tyagi, appearing for the State both PW2 and PW3 had clearly mentioned that the Appellant and PW4 Mahender Singh were both present at the place of occurrence. The Appellant's presence has been proved by two eye witnesses. It has been proved by the eye witnesses, that the Appellant carried a rifle. But PW2 and PW3 deposed that all the accused had opened fire. The prosecution was required to prove its case beyond reasonable doubt, which it has done, and not beyond all iota of doubt. The fact that one of the injured witnesses may not have mentioned the name of Appellant Karan Singh does not demolish the evidence of the other witnesses.

47. We find no grounds to interfere with the concurrent findings of the Trial Court and the High Court. The fact that the trial/appeal should have taken years and that other accused should have died during the appeal cannot be a ground for acquittal of the Appellant. The appeal is thus dismissed.

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