

SATVIR

v.

STATE OF UTTAR PRADESH  
(Criminal Appeal No. 551 of 2005)

JANUARY 21, 2009

**[LOKESHWAR SINGH PANTA AND B. SUDERSHAN  
REDDY, JJ.]**

*PENAL CODE, 1860:*

*s.302/34 – Eight accused convicted by trial court u/s 302/149 – Conviction of three of them converted by High Court to s.302/34 – Remaining acquitted – Appeal by one of the convicts contending that in the circumstances, he was also entitled to acquittal on benefit of doubt at par with those acquitted – HELD: Prosecution case against appellant and two other accused is fully established – They caused fatal knife injuries to victim – Appellant is constructively liable u/s 302/34.*

**The appellant (A-4) alongwith seven others was prosecuted for commission of offences punishable u/ss 147, 148 and 302/149 IPC. The prosecution case was that the complainant (PW-1) and accused 2 to 6, were collaterals. There was enmity between the two sides. PW-1 and his father were facing a trial for murder of the son of A-5. Another criminal case was pending against PW-1 and his father. On the day of incident when they were returning from the Court of Magistrate, father of PW-1 was attacked by the accused. A-4 to A-6 inflicted fatal knife injuries to him. PW-2, PW-4 and some others, hearing the shouts of PW-1, reached the scene of occurrence. The trial court convicted all the accused, *inter alia*, u/s 302/149 IPC and sentenced them to life imprisonment. During**

**A** pendency of the appeal filed by the accused, A-1 died. The High Court converted conviction of A-4 to A-6 to s.302/34 IPC, and acquitted the remaining accused of all the charges.

**B** In the appeal filed by A-4, it was contended for the appellant that the accused were falsely implicated by PW-1 due to enmity and, in any event, the evidence against the appellant was a verbatim version of the prosecution case on which the other accused were acquitted and, as  
**C** such, the appellant could not have been treated differently.

Dismissing the appeal, the Court

**D** HELD: 1.1. The evidence of eye witnesses, namely, PW-1, PW-2 and PW-4 is found to be concise, precise and satisfactory on the point that they had seen the appellant(A-4), A-5 and A-6 each causing grievous knife injuries to the deceased and due to the fatal injuries, he  
**E** died on the spot. They have been cross-examined at length but nothing tangible has been extracted from their evidence to create any shadow of doubt that they are not truthful witnesses. [Para 22 and 21] [440-B; 439-F-G]

**F** 1.2. It is well-settled that if the witness is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would be interested in ensuring that real culprits are punished. There is no reason as to why PW-1, PW-2 and PW-4 would  
**G** falsely depose against the appellant. [Para 21 and 22] [439-G-H; 440-A-C]

1.3. The trial court as well as the High Court have rightly held that there was a motive for the accused to commit the murder; they were nursing a grudge against  
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the deceased because of his involvement in the murder of the son of A-5. The report of the incident has been promptly lodged by PW-1 in which names of all the accused persons as also of PW-2 and PW-4 as eyewitnesses were mentioned. The ocular version of the eyewitnesses finds corroboration from the medical evidence. The occurrence, as spoken by the eyewitnesses, is fully established. The appellant alongwith A-5 and A-6 is constructively liable u/s 302 read with s.34 IPC for commission of the crime. [Para 22 and 24] [440-C-D-F; 441-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 551 of 2005.

From the Judgment and Order dated 25.2.2003 of the High Court of Judicature at Allahabad in Criminal Appeal No. 3232 of 1979.

Shakil Ahmed Syed for the Appellant.

T.N. Singh, Rajeev Dubey and Kamendra Mishra for the Respondent.

The Judgment of the Court was delivered by

**LOKESHWAR SINGH PANTA, J.** 1. Eight accused, namely, (1) Fateh Singh, (2) Ram Chander, (3) Brahma, (4) Satvir, (5) Ram Saran, (6) Harbir, (7) Pratap and (8) Genda were tried by learned VI Additional District & Sessions Judge, Meerut, in Sessions Trial No. 70 of 1978 for committing the murder of Hari Dutt Singh.

2. By judgment and order dated 05.12.1979, the learned trial judge convicted all the accused under Section 302 read with Section 149 of the Indian Penal Code (for short "IPC") and sentenced each to imprisonment for life. The accused – Ram

- A Saran, Satvir and Harbir have been further convicted under Section 148 IPC and each sentenced to two years rigorous imprisonment, whereas Fateh Singh, Genda, Pratap, Brahma and Ram Chander have been convicted under Section 147 IPC and sentenced to one year rigorous imprisonment. All the sentences were, however, ordered to run concurrently.

3. The accused persons filed joint appeal in the High Court of Judicature at Allahabad. The High Court by final judgment and order dated 25.02.2003 modified the judgment of the trial court. It converted the conviction of accused Satvir, Ram Saran and Harbir to Section 302 IPC read with Section 34 IPC and sentenced them to undergo life imprisonment. It, however, acquitted Ram Chander, Brahma, Pratap and Genda. Fateh Singh accused, during the pendency of the appeal before the High Court, had died; therefore his appeal stood abated.

4. Satvir appellant herein, has now approached this Court in this appeal. The learned counsel for the parties stated before us that no appeal appears to have been filed by other convicts, namely, Ram Saran and Harbir against the judgment and order of the High Court.

5. The incident leading to the prosecution of the appellant occurred on 31.10.1977 at about 4 P.M. in the jungle of village Ahmadpuri, Police Station Parikshatgarh, District Meerut (U.P.). The report of the incident was lodged by Mahendra Singh (PW-1) an eyewitness, son of the deceased Hari Dutt Singh at about 5.30 P.M. in the Police Station in which the names of all the accused persons were mentioned.

6. The following pedigree relevant for the purpose of noticing the relationships between the parties involved in the case is as under:-

Hari Dutt Singh (Deceased)	----- Kaley (brother of deceased)	----- Shiv Saran (brother of deceased)
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Mahendra Singh PW-1 (son of deceased)	Ram Saran Accused (son of Kaley)	Ram Chander Accused (son of Shiv Saran)	Brahma Accused (son of Shiv Saran)
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Harbir Accused (son of Ram Saran)	Satvir – Appellant Accused (son of Ram Chander)
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Pratap accused is the brother-in-law of Ram Chander accused; whereas Genda is 'Samdhi' of accused Ram Saran and accused Fateh Singh (deceased) was uncle of Mahendra Singh (PW-1).

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7. It was the prosecution case that Mahabir son of Ram Saran was murdered in the year 1976 and for the said incident; Hari Dutt Singh [deceased] and his son PW-1 were facing trial before the Court. One more criminal case filed by Smt. Sammo is pending against the deceased and PW-1 in the Court of a Magistrate at Meerut. On the day of incident, i.e. 31.10.1977, both PW-1 and Hari Dutt Singh had gone to the Court of Magistrate at Meerut to attend the proceedings in the said case but the same was adjourned at about 12 O'Clock in the noon. PW-1 and his father had returned to their village by bus. After getting down at Parikshatgarh, they started going to their village Ahmadpuri on foot. At about 4 P.M., they reached on the road dividing the fields of Balley and Muley where PW-1 was going about 20 paces ahead of his father. The accused persons hiding themselves in the sugarcane fields of Balley, suddenly appeared and laid down Hari Dutt Singh on the ground.

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- A Appellant Satvir, accused Ram Saran and accused Harbir each were armed with knives with which they inflicted fatal injuries on Hari Dutt Singh at the instigation of accused Ram Saran, who proclaimed that the life of Hari Dutt Singh should be cut short as he was responsible for the murder of his son Mahabir.
- B PW-1 shouted and raised alarm which attracted Bakhtawar Singh (PW-2), Ganga Saran (PW-4), Gajraj and few more persons to the place of occurrence. All the accused persons had fled from the place of incident after committing the murder of Hari Dutt Singh. One Jasbir Singh recorded the report (Ex. C Ka-1) of the incident at the instance of PW-1 on the basis of which First Information Report came to be lodged at Police Station at about 5.30 P.M.

8. Head Constable Satya Pal Singh (PW-6), who at the relevant time, was discharging the duties of A.S.I., Police Station Parikshatgarh visited the scene of incident and prepared *Panchnama* (Ex. Ka-6), Khaka-lash (Ex.-Ka-7) and Site Plan (Ex.-Ka-9) of the dead body and collected blood-stained sample of earth from the place of occurrence. Constable Sukhpal (PW-5) alongwith Constable Baburam took the dead body of Hari Dutt Singh to Hospital for *post mortem*.

9. Dr. O.P. Sharma (PW-3) conducted autopsy on the dead body of the deceased on 01.11.1977 at about 5 P.M. The following ante-mortem injuries were found on the dead body:

- F 1. Stab wound 13 cm x 5 cm x abdominal cavity deep on the front of abdomen right side upper part just below the coastal margin transversely; inner end of the wound was a little above and outer to the umbilicus.
- G 2. Stab wound 11 cm x 5 cm x abdominal cavity deep on the left side of abdomen 2 cm below the coastal margin transversely.
- H 3. Sub wound 5 cm 1 cm x abdominal cavity deep on

the front of abdomen just below the umbilicus transversely. A

4. Incised wound 1-1/2 cm x 5 cm x muscle on the front of abdomen right side just below the anterior superior iliac spine. B

5. Incised wound 9 cm x 5 cm trachea cut on the front of neck middle extending on both sides transversely.

6. Abrasion 1 cm 1 cm on the back of left elbow. C

10. On internal examination, small intestine was found stabbed at two places and large intestine stabbed at one place. Left lobe of liver was also stabbed. According to the opinion of the Doctor, the deceased died due to shock and haemorrhage as a result of *ante-mortem* injuries. D

11. On completion of the investigation, chargesheet was filed against the accused persons by Station House Officer Bijendra Singh Chahar (PW-7). E

12. All the accused pleaded not guilty to the charges and claimed to be tried.

13. The prosecution, in order to substantiate its case, examined as many as 7 witnesses, out of whom Mahendra Singh (PW-1), Bakhtawar Singh (PW-2) and Ganga Saran (PW-4) are the eyewitnesses. F

14. The accused in the statements recorded under Section 313 of the Criminal Procedure Code denied the incriminating evidence appearing against them. Their defence was denial simpliciter and pleaded false implication due to enmity. No defence witness has been examined by them. G

15. The trial court on appraisal of the entire evidence on record held all the accused guilty of the charges and convicted H

A them as aforesaid.

B 16. Being aggrieved, the accused had filed appeal before the High Court. The High Court, as stated above, allowed the appeal of accused Ram Chander, Brahma, Pratap and Genda and, accordingly, set aside their conviction and sentences, whereas the conviction of the appellant-Satvir, Ram Saran and Harbir is converted from Section 302 read with Section 149 and Section 148 IPC to Section 302 read with Section 34 IPC. They were sentenced to suffer rigorous imprisonment for life.

C 17. Feeling aggrieved thereby and dissatisfied with the judgment of the High Court, this appeal has been filed by appellant Satvir in this Court.

D 18. Mr. Shakil Ahmed Syed, learned counsel appearing on behalf of the appellant, contended that the evidence appearing on record against the appellant is verbatim version to that which was taken into consideration with regard to the acquittal of four accused and, therefore, the case of the appellant cannot be decided on any other scale and should have been treated at par with the evidence appearing against the acquitted persons. E The appellant and other accused persons have been implicated by PW-1 in a false case due to previous enmity as he alongwith deceased was an accused in the murder of Mahabir, son of Ram Saran. According to the learned counsel, the High Court has committed grave error in convicting the appellant on the F same set of evidence, on the basis of which four accused, namely, Ram Chander, Brahma, Pratap and Genda have been acquitted and, therefore, the judgment of the High Court suffers from factual and legal infirmity and perversity. The learned counsel then contended that the conduct of the alleged G eyewitnesses, namely, PW-1, PW-2 and PW-4 is so unnatural and casual that they witnessed the entire incident as silent spectators and did not make any attempt to save the life of Hari Dutt Singh at the hands of the accused. Therefore, no implicit H reliance can be placed on the evidence of these witnesses, who are not trustworthy.

19. Mr. T.N.Singh, Advocate appearing on behalf of the State, has canvassed correctness of the views taken by the trial judge which were confirmed by the High Court.

20. In order to appreciate the aforesaid rival contentions of the learned counsel for the parties, we have independently scrutinized the oral and documentary evidence appearing on record.

21. Mahendra Singh (PW-1) has clearly stated that at the time and on the day of incident he was with his father when the appellant and other accused suddenly attacked the deceased. He categorically stated that the appellant and his two companions Ram Chander and Harbir had inflicted knife injuries on the person of his father. He has given the names of all the accused persons in the report on the basis of which FIR came to be registered in the Police Station. PW-2 Bakhtawar Singh who is an independent witness deposed that on the day of incident when he was going to his village Bhadauli from village Kaili, on the way he heard an alarm raised by PW-1 and saw the appellant, Ram Saran and Harbir inflicting knife injuries to Hari Dutt Singh. Suggestion of the accused that he was not present at the place of incident or he had not seen the incident or that he is deposing falsely due to relationship, has been denied by him. PW-4 Ganga Saran Singh deposed that on the day of incident he witnessed the accused giving beatings to Hari Dutt Singh in between the fields of Balley and Muley. The appellant alongwith Ram Saran and Harbir had inflicted knife injuries on the person of Hari Dutt Singh. The eyewitnesses have been cross-examined at length by the learned counsel, but nothing tangible has been extracted from their evidence to create any shadow of doubt that they are not truthfulness witnesses. They have given reliable, consistent and creditable version of the crime and their evidence inspires confidence. It is well-settled that if the witness is related to the deceased, his evidence has to be accepted if found to be reliable and believable because he would *inter alia* be interested in ensuring

A that real culprits are punished.

22. On a careful and cautious scrutiny of the evidence of PW-1, PW-2 and PW-4, we find their evidence concise, precise and satisfactory on the point that they had seen the appellant, Ram Saran and Harbir causing grievous injuries to Hari Dutt Singh with knife which each was carrying with him and due to the fatal injuries, he died on the spot. The evidence of these three eyewitnesses is neither embellished nor embroidered. We find no particular reason as to why PW-1, PW-2 and PW-4 have falsely deposed against the appellant. The trial court as well as the High Court have rightly held that there was a motive for the accused to commit murder of Hari Dutt Singh because as per the prosecution evidence, they were nursing a grudge against the deceased because of his involvement in the commission of murder of Mahabir son of Ram Saran. The report of the incident has been promptly lodged by PW-1 in the Police Station in which the name of all the accused persons and PW-2 and PW-4 being eyewitnesses were mentioned. Simply because the eyewitnesses did not make any attempt to save the life of the deceased from the clutches of the accused persons, their abnormal conduct by itself cannot be taken as a ground to disbelieve and discard their testimony in regard to the genesis of the occurrence and the part played by the appellant and the other convicted persons in the commission of the offence.

23. The ocular version of the eyewitnesses finds corroboration from the evidence of Dr. O.P. Sharma who has found abovesaid six injuries on the body of Hari Dutt Singh. As per the post mortem report placed on record by Dr.O.P. Sharma, the deceased received three stab wounds and two incised wounds and in his opinion death of the deceased had occurred due to shock and haemorrhage as a result of *ante-mortem* injuries.

24. On our independent examination of the judgment given by the trial court and confirmed by the High Court, we find that

both the courts have properly and rightly re-assessed and reappraised the entire evidence on record and we find no infirmity or perversity in the findings recorded by the courts below warranting interference. The High Court has not found any reliable and clinching evidence led by the prosecution to prove the guilt of the acquitted-accused. Therefore, the contention that the appellant shall be held entitled to benefit of doubt in the same manner as other acquitted-accused have been given, cannot be accepted. The occurrence, as spoken by the eyewitnesses, is fully established and the appellant alongwith Ram Saran and Harbir will be constructively liable under Section 302 read with Section 34 IPC for the commission of the crime as fatal injuries were inflicted by them with knives which they were carrying in their hands at the time of commission of offence. The fatal injuries were caused with dangerous weapons on vital parts of the body of deceased which resultantly caused his death.

25. Learned counsel for the appellant lastly argued that the appellant had no intention to murder the deceased, therefore, no offence under Section 302 IPC was made out against him and at the most it could be a case under Section 304 Part-II IPC, cannot be accepted in view of the nature of injuries, the manner in which they were inflicted, the weapons of offence used and the vital parts of the body of the deceased selected by the appellant and other two convicted accused for causing the fatal injuries.

26. We, thus, find no merit and substance in any of the submissions made on behalf of the appellant.

27. In the result, for the afore-stated reasons, there is no merit in this appeal and it is, accordingly, dismissed.

R.P.

Appeal dismissed.