

Court No. 47

Reserved on 11.07.2019

Delivered on 29.07.2019

Case :- CRIMINAL APPEAL No. 1504 of 2011

Appellant :- Ram Vishal Lohar

Respondent :- State Of U.P.

Counsel for Appellant :- Satish Kumar Mishra, Akhilesh Kumar, Chandra Bhan, Mohd. Naushad Siddiqui, R.K. Singh, C.L. Chaudhary

Counsel for Respondent :- Government Advocate

Hon'ble Ram Surat Ram (Maurya),J.

Hon'ble Umesh Kumar,J.

[Delivered by Ram Surat Ram (Maurya),J.]

1. Heard Sri C.L. Chaudhary, Amicus Curiae, for the appellant and Sri I.P. Srivastava, A.G.A. 1st, for State of U.P.
2. Ram Vishal Lohar has filed this appeal, from judgment of Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989]/ Fast Track Court No. 2, Fatehpur dated 25.01.2011, passed in S.S.T. No. 49 of 2000, State of U.P. Vs. Ram Vishal Lohar [arising out of Case Crime No. 75 of 1999, under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as the IPC) and Section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S. Husainganj, district Fatehpur, convicting him under Section 302 I.P.C. and sentencing for imprisonment for life and fine of Rs. 8000/- with default stipulation.
3. On the written complaint (Ex-Ka-1) of Jagmohan (PW-1), FIR (Ex-Ka-6) of Case Crime No. 75 of 1999, under Section 307 IPC was registered on 18.05.1999 at 23:30 hours, at P.S. Husainganj, district Fatehpur, by Head Moharrir Subhash Chandra (PW-6) against Ram Vishal Lohar and two unnamed accused. It has been stated in the FIR that on 18.05.1999, the informant and his brothers Shivbodhan and Manbodhan were watching their sweet melon field. Harish Chandra and other villagers were also watching their crops in nearby fields. At about 10:00 PM, three persons entered the field of the informant and started plucking sweet melon. On which, his brother Shivbodhan stood up and coming forward, challenged the accused as to why they were plucking his sweet melon. The informant flashed torch on the aforementioned three accused. In the meantime, one accused opened fire from his pistol, which hit Shivbodhan on his forehead. Shivbodhan fell

down after receiving injury. Then the informant and his brother challenged the accused, flashing torch upon the accused, then all the three accused fled away towards south side. The person, who had fired, was Ram Vishal son of Chheddu of his village, who was known to them. Other two persons were also recognized the light of the torch but due to fluster, their names were not remembered. The other villagers also came on the spot at the time of incident and have seen all the three accused. They have brought Shivbodhan at the police station. After lodging FIR, legal action be taken.

4. After registration of FIR, SI Devendra Nath Upadhyay (PW-7), started investigation in the matter. He copied check FIR and G.D. entry in case diary and recorded statement of the informant and Constable Subhash Chandra. He came on the spot on 19.05.1999, made spot inspection on the pointing out of the informant and prepared site-plan (Ex-Ka-9). He took blood stained and plain earth from the spot and prepared its recovery memo (Ex-Ka-10). He arrested the accused Ram Vishal on 19.05.1999 at 22:30 hours and recorded his statement. Shivbodhan died on 20.05.1999 at 5:35 AM in hospital. On his death, the case was converted under Section 302 IPC and Section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 21.05.1999 at 21:15 hours.

5. After death of Shivbodhan, an information was sent from District Hospital Fatehpur to the police station Kotwali Fatehpur, for conducting Inquest of the dead body. On which, SI A.K. Singh (PW-8) conducted Inquest (Ex-Ka-11) of the dead body on 20.05.1999 during 11:00 to 12:00 hours. He prepared photo lash, challan lash and letters to the authorities (Ex-Ka-12 to Ka-15) for conducting postmortem of dead body and handed over dead body to Constable Shiv Bhushan Tiwari and Home Guard Mangal Sen, for taking the dead body up to mortuary. Dr. Rajeev Tiwari (PW-3) conducted autopsy of the dead body on 20.05.1999 at 5:15 PM and prepared Postmortem Report (Ex-Ka-3) in which following ante-mortem injuries were noted:-

Fire arm wound of entry, multiple in an area of 15x9 cm ranging from 0.2 cm x 0.2 cm right side of skull 2 cm above right ear. Right parietal bone fractured. Brain lacerated. Blood clot is present. 03 pellets recovered from scalp. 04 pellets recovered from cranial cavity.

In internal examination, heart was full; stomach contained 150 ml of watery fluid; small intestine was partially filled with flatus and fecal and large intestine filled with gases and fecal matter. According to Doctor death is due to coma as a result of ante mortem fire arm injury.

6. After conversion of the case, investigation was handed over to Circle Officer of Police Awadhesh Kumar Vijeta (PW-4). He obtained Inquest report and Postmortem Report and copied it in case diary. He recorded statement of Manbodhan. He took the torch in custody and prepared its recovery memo (Ex-Ka-4). He recorded statement of Harish Chandra, the witnesses of the recovery memo and Panches of Inquest. He recorded statement of the accused in jail. He recorded statements of SI Devendra Nath Upadhyay and scribe of FIR. After completing investigation, he submitted charge sheet (Ex-Ka-5) against Ram Vishal Lohar, on which cognizance was taken.

7. On committal, the case was registered as SST No. 49 of 2000, State Vs. Ram Vishal Lohar. Special Judge framed charges against the accused on 08.06.2001. The accused pleaded “not guilty” and claimed for trial. In order to prove the charges, apart from documentary evidence, the prosecution examined Jagmohan (PW-1), the informant and an eye witness, Manbodhan (PW-2), an eye witness, Dr. Rajeev Tiwari (PW-3), to prove Postmortem Report (Ex-Ka-3), SP City Awadhesh Kumar Vijeta (PW-4), Second Investigating Officer, Harish Chandra (PW-5), an eye witness, HM Subhash Chandra (PW-6), to prove check FIR, SI Devendra Nath Upadhyay (PW-7) First Investigating Officer, SI A.K. Singh (PW-8) to prove Inquest (Ex-Ka-11) and Dr. P.K. Shukla (PW-9), to prove Injury Report (Ex-Ka-15). Out of the aforesaid witnesses, Jagmohan (PW-1) and Harish Chandra (PW-5) did not support the prosecution case and the prosecution declared them as hostile.

8. After completion of the evidence of the prosecution, all the incriminatory facts and materials were put to the accused under Section 313 CrPC. He denied the facts and materials and claimed for false implication due to enmity. He along with Nem Chandra Patel were constructing building of his son-in-law at village Manpur, P.S. Husainganj, district Fatehpur at the time of incident and was living there day to night. At the time of incident, he was there at village Manpur. He examined Chhote Lal (DW-1), his son-in-

law, Nem Chandra (DW-2) and Rajaram (DW-3) to prove his alibi.

9. After hearing the parties, Special Judge, by impugned judgment held that although Jagmohan (PW-1) was declared as hostile but he had proved lodging of FIR. Manbodhan (PW-2) has proved the prosecution case as an eye witness, who had seen the incident in the light of torch. There was no reason for him to falsely implicate the accused. Distance between the villages Sahanipur and Manpur was 3 KM only as such the accused could have come very easily to the place of incident. The defence witnesses were not reliable. Shivbodhan received gunshot injury on 18.05.1999 at 22:00 hours and admitted to District Hospital Fatehpur on the same day at 23:55 hours, where he died on 20.05.1999 at 5:35 hours due to his injury as such the charge under Section 302 IPC was proved against the accused. The incident had occurred in night at the field as such charge under Section 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was not proved. On these findings, he convicted the appellant under Section 302 IPC and sentenced as stated above. Hence this appeal has been filed.

10. We have considered the arguments of counsel for the parties and examined the record. From the evidence on record and statements of formal witnesses, it is fully proved that Shivbodhan received firearm injury on 18.05.1999 at 22:00 hours at his sweet melon field, while he was watching his sweet melon field along with his brothers. FIR of the incident was promptly lodged on 18.05.1999 at 23:30 hours. Shivbodhan was admitted to District Hospital Fatehpur on the same day at 23:55 hours, where he died on 20.05.1999 at 5:35 hours due to his injury. In order to prove the charges, the prosecution examined Jagmohan (PW-1), Manbodhan (PW-2) and Harish Chandra (PW-5) as an eye witnesses. But Jagmohan and Harish Chandra did not support the prosecution case and were declared as hostile.

11. Jagmohan (PW-1) stated that on 18.05.1999, he and his brothers Manbodhan and Shivbodhan were watching their sweet melon field. Harish Chandra was present at his tube-well. At about 10:00 PM, three persons entered his field and started plucking sweet melon. His brother Shivbodhan stood up and proceeded forward, asked that who were you and why they were plucking his sweet melon? He flashed torch upon the accused. On which the

accused opened fire from his pistol upon his brother, which hit at his forehead. They ran towards the accused and saw that the accused was similar to the face of Ram Vishal but he was not Ram Vishal. On the asking of the villagers, he named Ram Vishal in FIR. He got the written complaint scribed through Sukhram son of Gaya Prasad, resident of Sahanipur and after hearing it, he signed it.

In cross-examination, he stated that after death of his brother his mental condition has been deteriorated and not functioning properly.

Jagmohan (PW-1) has narrated the whole incident and admitted lodging of FIR by him but has stated that the person, who had shot fire upon his brother Shivbodhan appeared to be of the face of Ram Vishal. He named Ram Vishal in the FIR, on the saying of the villagers. He also admitted presence of Manbodhan (PW-2) on the spot.

12. In the FIR and statement of Jagmohan (PW-1), presence of Manbodhan (PW-2) on the spot was noted. However in the site-plan (Ex-Ka-9), presence of Manbodhan (PW-2) was not shown, which may be a negligence of Investigating Officer as he should have shown the location of the witnesses named in the FIR. Mere irregularity or omission on the part of the Investigating Officer does not cast cloud over prosecution version as the Investigating Officer is not obliged to anticipate all possible defenses and investigate in that angle. In any event, omission on the part of the Investigating Officer cannot go against prosecution. The interest of justice demands that such acts or omission of the Investigating Officer should not be taken in favour of accused or otherwise, it would amount to placing premium upon such omissions as held by Supreme Court in **Rahul Mishra Vs. State of Uttarakhand, AIR 2015 SC 3043** and **V. K. Mishra Vs. State of Uttarakhand (2015) 9 SCC 588**. Manbodhan (PW-2) stated that he knew Ram Vishal present in the Court, who was by caste '*lohar*'. On 18.05.1999, he, his brothers Shivbodhan and Jagmohan were watching their sweet melon field. Other villagers were also watching their crops in nearby fields. At about 10:00 PM, three persons entered the field of the witness and started plucking sweet melon. Jagmohan was having a torch. He and his brother Shivbodhan objected to the accused from plucking the sweet melon and flashed torch

upon the accused. On which Ram Vishal opened fire from his pistol, which hit Shivbodhan on his forehead. He was also present at the field. Shivbodhan fell down after receiving injury. The accused fled away towards south. Ram Vishal had fired. Jagmohan flashed torch, in which light, he and Jagmohan had seen the incident and recognized the accused. He, Jagmohan and other villagers took Shivbodhan to the police station, in injured condition, where his brother Jagmohan lodged the FIR.

In cross-examination, he stated that Shivbodhan had no son. His wife has also died prior to the incident. After death of his father, the land came to be recorded in his name and in the name of Jagmohan. He denied that Shivbodhan wanted to give land of his share to his daughter. He denied that he and Shivbodhan had committed murder of Jagmohan in greed of the land. He cannot say, the date, month and year of the incident. The incident took place in dark night. Jagmohan was having a torch. He did not have torch. The torch, in which light, he had recognized the accused was not in the Court. His brother died at District Hospital, Fatehpur, after one day and one night from the date of incident. No police officer has recorded his statements in respect of the incident. His field situated towards north of the place of incident. In south, field of Motilal was situated. In east, land of one *panditain* was situated, whose name was not remembered to him. In west, land of Chhedi Lal was situated. He did not see the accused, while entering his sweet melon field. He saw the accused after ten minutes of plucking the sweet melon. He denied that he or Jagmohan had any village enmity with the accused Ram Vishal. Ram Vishal was armed with pistol and remaining accused were armed with *lathi-danda*. Total three persons were plucking sweet melon. He was not knowing the accused prior to the incident. After fire, the accused fled away towards south. His village situated at a distance of 700 to 800 feet or about half kilometer from the place of occurrence. Ram Kumar, Ganga Sagar, Tulla and other persons had come from the village. Ram Vishal fled away immediately after fire. About 8 minutes time had been taken in coming to the place of occurrence from the village. The accused Ram Vishal was resident of his village and remaining were not known. He did not know as to whether any other case was initiated against the accused apart from this case or Ram

Vishal was ever caught while committing theft. He remained out of the village from 1964 to 1991. He denied the suggestions that he had falsely implicated Ram Vishal due to enmity and he was not present on the spot or the incident was not occurred in the manner, which was being alleged.

13. Presence of Jagmohan and Manbodhan (PWs-1 and 2) along with the deceased Shivbodhan at the place of occurrence, which was their sweet melon field, for watching it in night, was natural. Nothing has been shown from the side of defence, which creates any doubt in respect of the presence of the witnesses on the spot. According to the witnesses, when Shivbodhan intercepted the accused in plucking sweet melon from his field then Jagmohan flashed his torch upon the accused and the accused Ram Vishal opened fire from his pistol, which caused injury to Shivbodhan. SP City Awadhesh Kumar Vijeta (PW-4) stated that he had prepared memo (Ex-Ka-4) of the torch of Jagmohan. Ram Vishal, the accused was resident of the village of the deceased and was known to the witnesses. There could be no mistake in recognizing the accused by Manbodhan (PW-2) in the light of torch. There was no reason for false implication. Manbodhan (PW-2) is fully reliable witness and his testimony is corroborated with medical evidence. Trial Court has not committed any illegality in relying upon Manbodhan (PW-2).

The Apex Court, regarding the advisability of conviction based on solitary testimony of a witness, has held in **Sudip Kumar Sen alias Biltu Vs. State of West Bengal and others (2016) 3 SCC 26** that the Court may act on a testimony of a single witness though uncorroborated, provided that the testimony of the single witness is found reliable. In the case in hand, after close scrutiny of the testimony of Manbodhan (PW-2), we found him wholly reliable and trustworthy and his testimony cannot be doubted.

14. So far as plea of alibi raised by the accused is concerned, the accused examined Chhote Lal (DW-1), who was his son-in-law, Nem Chandra (DW-2), who was a mason and was working along with the accused and Rajaram (DW-3) who was a labourer and was working with the accused at the time of occurrence. Trial Court found that distance between the villages Sahanipur (where the incident took place) and Manpur (where the accused was allegedly working) was 3 KM only as such the accused could have come very

easily to the place of incident. Trial Court has given cogent reason to disbelieve the defence witnesses and not accepting the plea of alibi.

15. In view of aforesaid discussions, the appeal has no merit and is **dismissed**. The appellant is in jail. Registry is directed to transmit the original record of the Trial Court and the judgment for immediate compliance to the Court concerned so as to ensure that the accused-appellant serves out the remaining sentence, in accordance with law. The Trial Court is obliged to communicate compliance report to this Court forthwith.

16. Sri C.L. Chaudhary, Amicus Curiae has argued this case on behalf of the appellant. He shall be paid Rs. 10,000/- (Rupees Ten thousand) as his fees.

Order date: 29.07.2019

Rahul Dwivedi/-

[Umesh Kumar,J.] [Ram Surat Ram (Maurya),J.]