

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1475 OF 2017

GUMAN SINGH APPELLANT(S)

VERSUS

STATE OF RAJASTHAN RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

The appellant, Guman Singh impugns judgment dated 10.03.2017 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jaipur, which confirms his conviction under Section 302 of the Indian Penal Code (“IPC”, for short) for murder of Shiv Charan and under Section 307 read with Section 34 IPC for attempt to murder Babu Singh. Appellant stands sentenced under Section 302 IPC to life imprisonment and fine of Rs. 10,000/- and in default of payment of fine to serve additional rigorous imprisonment for one year and for an offence under Section 307 IPC to rigorous imprisonment of 10 years with fine of Rs. 1,000/- and in default of payment, an additional rigorous imprisonment of one year.

2. The conviction arises out of FIR No. 464/2009 registered on 30.08.2009 at 8.20 p.m. in Police Station Hindaun City, District-Karauli, Rajasthan and the consequent charge-sheet filed against the present appellant, i.e. Guman Singh, and Jagdish Singh, Satvir Singh and Shyam Singh. Jagdish Singh was acquitted by the Additional Sessions Judge, Hindaun City, Karauli, Rajasthan vide judgment dated 07.06.2013 and Shyam Singh and Satvir Singh have been acquitted in the impugned judgment of the High Court.

3. The primary issue/question raised before us relates to veracity and truthfulness of the testimonies of Tara Singh (PW-1) and Varun Singh (PW-4), son and nephew of the deceased Shiv Charan. Tara Singh (PW-1) and Varun Singh (PW-4) have deposed that they along with Shivendra Singh were on a motorcycle on their way from Hindaun to Village Banki. The deceased Shiv Charan and the injured Babu Singh were on another motorcycle a few steps ahead of them. Near *Chauve ka bandh*, another motorcycle with the present appellant Guman Singh and Satvir Singh s/o Ramoli and Shyam Singh s/o Ummed Singh, residents of Village Banki, appeared from behind and came parallel to the motorcycle driven by the deceased Shiv Charan. One of the riders from the third motorcycle had then fired a shot

that had hit Babu Singh on his side and back. The motorcycle skidded and Shiv Charan and Babu Singh fell down. Guman Singh had then fired at the chest of Shiv Charan. Satvir Singh and Shyam Singh too had fired at Shiv Charan. Guman Singh, Satvir Singh and Shyam Singh had also fired shots at Tara Singh (PW-1) and Varun Singh (PW-4) who had managed to escape by running towards the Hindaun City to save their lives. They had, from STD booth near Chungi, informed their relatives about the occurrence. On seeing a police vehicle, they drove along with police to the place of occurrence.

4. However, this version as to their presence at the place of occurrence and being eye-witnesses to the firing by Guman Singh is a suspect and in grave doubt, in view of the testimony of Gulam Navi (PW-7) the Investigating Officer and SHO Police Station Hindaun City, who has deposed that on 30.08.2009 at around 5.30 p.m. information was received from an unknown person that someone had been fired upon by another near *Chauve ke bandh*. PW-7 on reaching the spot along with other police officials found Babu Singh lying in an injured condition. Shiv Charan had already died. One motorcycle was lying at the spot. On directions of Gulam Navi (PW-7), the deceased Shiv Charan and Babu Singh were taken to the hospital. Gulam Navi (PW-7) has not deposed

and accepted presence of Tara Singh (PW-1) and Varun Singh (PW-4) at the spot at 5.30. p.m. on 30.8.2009. As per PW-7, his first meeting with Tara Singh (PW-1) was at the hospital at around 8.20 p.m., when a written complaint was given to him by Tara Singh (PW-1). Upon receipt of the written complaint, steps were taken for registration of the FIR. Similarly, Babulal Bhaskar (PW-10) Sub-Inspector, has deposed that on 30.08.2009 at 5.30 p.m. he had left the police station and had reached the hospital at around 5.55 p.m. Around 8.20 p.m., he had initiated the proceedings after preparing the panchnama etc. In his cross-examination, PW-10 had testified that till 8.20 p.m. none of the witnesses had disclosed and named the attacker(s) and they had also not indicated as to the type of weapon used in the offence.

5. On reading testimonies of Gulam Navi (PW-7) and Babulal Bhaskar (PW-10), we find that their versions contradict the version given by Tara Singh (PW-1) and Varun Singh (PW-4) as to their presence at the place of occurrence and their claim that they were following the deceased Shiv Charan and the injured Babu Singh on another motorcycle. Their presence is highly doubtful and their eye-witness account apparently conjured, as they were not found at the spot when Gulam Navi (PW-7) the SHO and Investigating Officer had reached *Chauve ke bandh* at around 5.30 p.m. on

30.08.2009. Gulam Navi (PW-7) in his cross-examination also had accepted as correct that the informant Tara Singh (PW-1) was not present at the place of the occurrence till the time Babu Singh was sent to hospital. Between 5.30 p.m. to 8.20 p.m., PW-7 was not informed and told as to who had fired upon Shiv Charan. First conversation between Tara Singh (PW-1) and Varun Singh (PW-4) and Gulam Navi (PW-7) was in the hospital at about 8.20 p.m., nearly 3 hours after the occurrence, and both had then for the first time projected themselves as eye witnesses. The assertion and claim of Tara Singh (PW-1) and Varun Singh (PW-4) of being eye-witnesses to the incident was clearly on second thoughts and after due deliberation.

6. Statements of Tara Singh (PW-1) and Varun Singh (PW-4), under Section 161 of the Code of Criminal Procedure, 1973 (“the Code”, for short), were recorded by the SHO and the Investigating Officer Gulam Navi (PW-7) three days after the date of occurrence on 03.09.2009. This delay is substantial and assumes some importance as it has been alleged that the FIR has been back dated and was never sent to the Magistrate as required vide Section 157 of the Code.

7. While the aforesaid contention as recorded in paragraph 6 may not by itself be significant, but testimony of Babu Singh (PW-3) is. Babu Singh, it is stated, had returned from Jaipur on 3.09.2009 and thereupon his statement under Section 161 of the Code was recorded. Pertinently, Babu Singh (PW-3) in his examination-in-chief had turned hostile and did not name the appellant and three others who were charge-sheeted. Babu Singh's presence on the spot cannot be doubted, as he was the only injured witness. Babu Singh (PW-3) did not depose as to the presence of Tara Singh (PW-1) and Varun Singh (PW-4) on another motorcycle or that they were following them. He had stated that he was fired from behind and thereafter, had become unconscious and had fallen down. On regaining consciousness, he had noticed police personnel and a person holding camera. Thereafter, he was taken to the hospital. He did not know who had fired at him. Babu Singh (PW-3) was certainly conscious when he was brought to the hospital because he had also signed the Medical Examination Report / MLC. Babu Singh (PW-3) did not depose as to the presence of the present appellant nor did he identify any of the assailants.
8. In view of the testimonies of Babu Singh (PW-3) and Gulam Navi (PW-7), there is a clear contradiction and direct conflict between

the version given by them and Tara Singh (PW-1) and Varun Singh (PW-4), who assert and claim their presence and being eye-witnesses to the occurrence. We would for reasons stated above rely on the version given by Babu Singh (PW-3), Gulam Navi (PW-7) and Babu Lal Bhaskar (PW-10). Therefore, identification by Tara Singh (PW-1) and Varun Singh (PW-4) of the appellant- Guman Singh as one of the perpetrators who had fired on Shiv Charan and Babu Singh (PW-3) is unreliable and should not be accepted without substantial corroboration and supporting material/evidence to establish involvement of the appellant- Guman Singh.

9. On the aspect of corroboration, prosecution relies upon the FSL report, exhibit P-48, opining that barrel residue examination of '8mm/.315' country-made pistol (W/1) had revealed that pistol had been fired, but, definite time of its last firing could not be ascertained. The FSL report also opines that it was not possible to link definitely the '8mm/.315' Soft Round nose Copper Jacketted Bullet 'B/1' from packet 'D 1' with the country-made pistol (W/1) from packet 'E' due to lack of sufficient evidence. Thus, the bullet 'B/1' recovered from the body of Babu Singh (PW-3) would not be matched with the country-made pistol. The bullets recovered from the body of deceased Shiv Charan were not sent

for ballistic examination and comparison. This is surprising as bullets were certainly recovered from the body of the deceased Shiv Charan and no explanation is forthcoming why these bullets were not sent for ballistic examination. Prosecution however relies on the finding in the FSL report that the hole on the shirt worn by Babu Singh appeared to have been caused by a copper jacketed bullet. In the factual matrix and the evidence established and proved, the aforesaid opinion on the hole in the shirt and the bullet is rather a weak evidence that would not be sufficient to implicate and corroborate the involvement the present appellant.

10. In ***Sunil Kumar v. State (Govt. of NCT of Delhi)*** (2003) 11 SCC 367, this Court had graded witnesses into genus of wholly reliable, wholly unreliable, neither wholly reliable nor wholly unreliable and had dealt with the consequences that flow from the testimonies from each of these categories. In the present case, the testimonies of Tara Singh (PW-1) and Varun Singh (PW-4) have to be held to be in the second category as wholly unreliable. Even if we treat their testimonies as falling in the third genus where the Court has to treat the same with circumspection and look for corroboration in material particulars by reliable evidence/ testimony, direct or circumstantial, the case of the prosecution would fail, for there is nothing to support and show the

involvement of the appellant in the crime other than the unreliable attribution by Tara Singh (PW-1) and Varun Singh (PW-4). The prosecution, therefore, has to fail as it has failed to prove that the evidence has a ring of truth, is cogent, credible and trustworthy so as to establish the charge beyond reasonable doubt.

11. As noticed above, the charge-sheet in the present case was filed against present appellant Guman Singh and three others namely Jagdish Singh, Shyam Singh and Satvir Singh. Jagdish Singh was acquitted by the trial court and Shyam Singh and Satvir Singh have been acquitted by the impugned judgment of the Division Bench of the High Court.
12. In view of the discussion, we would accept the present appeal and set aside the conviction of Guman Singh, who should be set free forthwith unless he is required to be detained in any other case in accordance with law.

.....J.
[INDIRA BANERJEE]

.....J.
[SANJIV KHANNA]

**NEW DELHI;
MAY 24, 2019.**