

Ombir Singh vs The State Of Uttar Pradesh on 26 May, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2609, AIR ONLINE 2020 SC 564

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Bench: Sanjiv Khanna, Mohan M. Shantanagoudar, N.V. Ramana

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 982 OF 2011

OMBIR SINGH

..... APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH AND
ANOTHER

..... RESPONDENT(S)

JUDGMENT

SANJIV KHANNA, J.

The appellant Ombir Singh has challenged the judgment dated 27.10.2009, by the Allahabad High Court, confirming his conviction under section 302 read with Section 34 of the Indian Penal Code, 1860 ('IPC', for short) and section 27 of the Arms Act, 1959, for the murder of Abhaiveer Singh Bhadoria @ Munna on 15.07.1999 at about 9 am. The appellant has also challenged the sentence of life imprisonment and fine of Rs. 11,000/- imposed by the Trial Court and confirmed by the High Court.

2. Homicidal death of Abhaiveer Singh Bhadoria @ Munna on 15.07.1999 at about 9 am near the house of one Shivraj Singh Sengar is not challenged and disputed before us. The said factum has been proved, without any doubt, by documentary and ocular evidence which we would notice below and also by the post mortem report Ex.A/2 proved by Dr. Balbeer Singh (PW-3), who was then working as a surgeon in the District Hospital Itawa. He has deposed that Abhaiveer Singh Bhadoria @ Munna had died as a result of as many as 5 firearm injuries that he had identified by referring to five entry and five exit wounds. We shall subsequently refer to Dr. Balbeer Singh's (PW-3) testimony as to the time when he had received the dead body of Abhaiveer Singh Bhadoria @Munna and the

details and documents made available to him by the Investigation Officer.

3. The prime arguments on behalf of the appellant are that the alleged eye-witnesses Dinesh Singh, the original complainant and brother of the deceased Abhaiveer Singh Bhadoria @ Munna, who has deposed as PW-1, and Mukesh Singh (PW-2) are unreliable, and they had been set-up and planted by the prosecution. In support, reliance is placed upon Dinesh Singh's (PW-1) and Mukesh Singh's (PW-2) version that they had not seen anyone from the field unit, though 14 photographs (Ex-13/C-1 to Ex-13/C-

13) were taken by the field unit, as proved and deposed to by Rakesh Babu and Omkar Singh who had testified as Court Witnesses, CW-2 and CW-3. It was highlighted that the First Information Report ('FIR', for short), purportedly recorded on the details and information furnished by Dinesh Singh (PW-1), contrary to the mandate of Section 157 of the Code of Criminal Procedure ('Code', for short) was belatedly sent and received by the ilaka magistrate (Chief Judicial Magistrate in this case) after 11 days, and that the FIR was not sent to Dr. Balbeer Singh (PW-3) along with the inquest papers. Thus, it was submitted that the FIR was ante-timed and in the background of personal and political rivalry between the parties, the appellant had been framed by the two purported eye witnesses Dinesh Singh (PW-1) and Mukesh Singh (PW-2), who were not present at the spot and therefore, were not injured. The Trial Court had not accepted their testimonies against Pramod Singh, who as per said witnesses was present with the appellant and an equal participant in the occurrence, and was acquitted. These contentions have been contested by the counsel for the State, who has relied on the findings of the Trial Court which were affirmed by the High Court.

4. There was undoubtedly a delay in compliance of section 157 of the Code, as the FIR was received in the office of the Chief Judicial Magistrate with a delay of 11 days. Effect of delay in compliance of Section 157 of the Code and its legal impact on the trial has been examined by this court in *Jafel Biswas v. State of West Bengal* 1 after referring to the earlier case laws, to elucidate as follows:

"18. In *State of Rajasthan* [*State of Rajasthan v. Daud Khan*, (2016) 2 SCC 607 : (2016) 1 SCC (Cri) 793] in paras 27 and 28, this Court has laid down as follows:

(SCC pp. 620-21) "27. The delay in sending the special report was also the subject of discussion in a recent decision being *Sheo Shankar Singh v. State of U.P.* [*Sheo Shankar Singh v. State of U.P.*, (2013) 12 SCC 539 : (2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows: (SCC pp. 549-50, paras 30-31) '30. One other submission made on behalf of the appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction Magistrate, violation of Section 157 CrPC has crept in and thereby, the very registration of the FIR becomes doubtful. The said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00 p.m. on 13-6-1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High Court [*Sarvajit Singh v. State of U.P.*, 2003

SCC OnLine All 1214 : (2004) 48 ACC 732] as well as of the trial court discloses that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 CrPC. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) 1 (2019) 12 SCC 560 effect on the case of the prosecution. Therefore, the said submission made on behalf of the appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in Sandeep v. State of U.P. [Sandeep v. State of U.P., (2012) 6 SCC 107 :

(2012) 3 SCC (Cri) 18] wherein the said position has been explained as under in paras 62-63: (SCC p. 132) “62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 CrPC instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh v. State of Punjab [Pala Singh v. State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in Pala Singh [Pala Singh v. State of Punjab, (1972) 2 SCC 640 : 1973 SCC (Cri) 55] to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay. As far as the commencement of the investigation is concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the case of the prosecution on that score. In fact the above decision was subsequently followed in Sarwan Singh v. State of Punjab [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] , Anil Rai v. State of Bihar [Anil Rai v. State of Bihar, (2001) 7 SCC 318 : 2001 SCC (Cri) 1009] and Aqeel Ahmad v. State of U.P. [Aqeel Ahmad v. State of U.P., (2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11] ”

28. It is no doubt true that one of the external checks against antedating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR “forthwith” ensures that there is no manipulation or interpolation in the FIR. [Sudarshan v. State of Maharashtra, (2014) 12 SCC 312 : (2014) 5 SCC (Cri) 94] If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so.

[Meharaj Singh v. State of U.P., (1994) 5 SCC 188 :

1994 SCC (Cri) 1391] However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case. [Rattiram v. State of M.P., (2013) 12 SCC 316 : (2014) 1 SCC (Cri) 635] ”

19. The obligation is on the IO to communicate the report to the Magistrate. The obligation cast on the IO is an obligation of a public duty. But it has been held by this Court that in the event the report is submitted with delay or due to any lapse, the trial shall not be affected.

The delay in submitting the report is always taken as a ground to challenge the veracity of the FIR and the day and time of the lodging of the FIR.

20. In cases where the date and time of the lodging of the FIR is questioned, the report becomes more relevant. But mere delay in sending the report itself cannot lead to a conclusion that the trial is vitiated or the accused is entitled to be acquitted on this ground.

21. This Court in Anjan Dasgupta v. State of W.B. [Anjan Dasgupta v. State of W.B., (2017) 11 SCC 222 : (2017) 4 SCC (Cri) 280] (of which one of us was a member, Hon'ble Ashok Bhushan, J.) had considered Section 157 CrPC. In the above case also, the FIR was dispatched with delay. Referring to an earlier judgment [Rabindra Mahto v. State of Jharkhand, (2006) 10 SCC 432 : (2006) 3 SCC (Cri) 592] of this Court, it was held that in every case from the mere delay in sending the FIR to the Magistrate, the Court would not conclude that the FIR has been registered much later in time than shown.

Therefore, delay in compliance of Section 157 of the Code cannot, in itself, be a good ground to acquit the appellant. Albeit, this fact has to be considered when we examine the credibility of the version of the eye-witnesses; in this case, the testimonies of Dinesh Singh (PW-1) and Mukesh Singh (PW-2). We must also keep in mind that there were questions raised by the complainant and the family members of the deceased as to the manner in which the investigation was carried by the first Investigation Officer and his team, and therefore the investigation was subsequently transferred to the Crime Branch- Crime Investigation Department ('C.B.C.I.D', for short) on 01.08.1999.

5. While examining this contention, it may be pertinent to note that Dr. Balbeer Singh (PW-3) in his testimony had referred to the Post Mortem Report (Ex-A/2) and had stated that the post mortem was conducted on 15.07.1999, at about 03:00 p.m. Dr. Balbeer Singh (PW-3) had also referred to several papers that were sent to him including the panchayatnama. The covering letter/document exhibited as Ex-A/5, refers to as many as nine documents attached with it. However, Dr. Balbeer Singh (PW-3) had deposed that the documents at serial number 6 and 7 were missing. In his cross-examination, Dr. Balbeer Singh (PW-3) had categorically stated that the seven documents including the panchayatnama were received and signed by him. The panchayatnama was the

reproduction of the first statement of Dinesh Singh (PW-1) that was recorded by S.I. Nanhu Mal who had deposed as PW-7. Interestingly, this PW-7 was not questioned as to delay in the service of FIR. The FIR Ex-A/1 is a detailed one and refers to the presence of Dinesh Singh (PW-1), Mukesh Singh (PW-2) and Virendra Kumar Chaudhary at the time of the incident. It eloquently describes the manner in which the murder was committed. Dinesh Singh (PW-1) and Mukesh Singh (PW-2) were subjected to intensive cross-examination. Dinesh Singh (PW-1) and Mukesh Singh (PW-2) have identically testified that on 15.07.1999 at around 9 a.m., they along with the deceased Abhaiveer Singh Bhadauriya @ Munna and Veerendra Kumar Chaudhary came from Shastri crossing to station and halted their TATA Sumo there. They walked towards the house of one Shivraj Singh Sengar. Since it was the deceased who wanted to meet Shivraj Singh Sengar, he took the lead and was 18 steps (kadam) ahead of them. The deceased was stopped, near the government tap (Nal) which was installed near the house of Shivraj Singh Sengar, by the appellant Ombir Singh, his brother Shiv Veer Singh, and Roopesh Singh @ Rocky who had rifles in their hands, and Pramod Singh (acquitted by the trial court) who had a country-made revolver (tamancha) with him. Shiv veer Singh, the brother of the appellant shouted--“saala bohot mukadmebaaz banta hai, roz-roz stay le aata hai, ye jail nhi jayega. Is saale ko jaan se maar do”, then all of them opened fire, with their arms, upon the deceased Abhaiveer Singh Bhadauriya @ Munna who fell down after receiving the shots. The accused party had threatened Dinesh Kumar (PW-1), Mukesh Singh (PW-2) and Veerendra Singh who then fled through the western street viz. to the direction from where they came from. We have examined their testimonies and find that they had correctly identified the appellant, and also narrated the motive, which would be a corroborative factor. The clothes worn by Dinesh Singh (PW-1) and Mukesh Singh (PW-2) were seized and as per the Chemical Examination Report presence of human blood was ascertained. In our opinion, the Trial Court and the High Court have correctly relied upon their ocular evidences. The testimony of Head Constable Maujan Singh (PW-6), who was posted as a shadow to guard the appellant Ombir Singh, clearly mentions that on 15.07.1999 i.e. on the date of incidence, he had visited the residence of the appellant at 06:45 a.m. and the appellant was not present. He was informed that the appellant had gone out. It may be noted that the occurrence had taken place at 9:00 a.m. on 15.07.1999 and the appellant had absconded after the incidence and was arrested on 22.07.1999. Thus, we are not convinced and would reject the argument that the appellant should be acquitted for non-compliance of section 157 of the Code.

6. As to the field unit, their presence cannot be doubted as is clear from the statement of Rakesh Babu (CW-2) and Omkar Singh (CW-3). They had taken photographs exhibited 13/C-1 to 13/C-13. Ambiguity as to the presence of the field unit and to the photographs primarily arises from the testimonies of Dinesh Singh (PW-1) and Mukesh Singh (PW-2) who had not confirmed their presence and the photographs, but this can easily be explained as the said witnesses had recently witnessed the murder of Abhaiveer Singh Bhadoria @ Munna, brother of Dinesh Singh (PW-1), by atleast 5 bullet shots that had hit the deceased and pierced his body. Moreover, a witness would not be aware about the difference between an officer of field unit and officers attached to the Police Station. Similarly, the fact that the field unit had not recorded the name of the deceased in the proceedings, in our opinion, is inconsequential for these details are duly mentioned in the panchayatnama and other documents which were prepared on the same day i.e. 15.07.1999 and were sent to Dr. Balbeer (PW-3) who had conducted the post mortem. The lapse on the part of the

field unit in non-mentioning the name of the deceased would not justify an order of acquittal. Notably, the field unit stayed at the spot from 10:50 a.m. till 02:00 p.m., which would indicate that non-mentioning of the name of the deceased was an error and does not imply that the name of the deceased was unknown, given the fact that the post-mortem was conducted on the same day. The murder had taken place in a residential locality and the deceased was a well-known person and a local politician. There is deposition of a police officer, namely Hardeo Bahadur Singh (PW-5), as to the presence of huge crowd assembled at the spot. We would, therefore, reject the contention that the field unit had not recorded the name of the deceased as it was unknown and therefore the presence of Dinesh Singh (PW-1) and Mukesh Singh (PW-2) was doubtful.

7. Further, the acquittal of Pramod Singh by the Trial Court was for the reason that he was supposed to have used tamancha (a local firearm), but the police had not recovered the empty cartridges or the pellets from the spot. Pertinently, the Post Mortem Report also does not refer to any pellet injuries. Thus, Pramod Singh was given a benefit of doubt. However, the Trial Court, on the basis of the evidence on record, had convicted the appellant both under section 302 read with Section 34 IPC and section 27 of the Arms Act, for the murder of Abhaiveer Singh Bhadoria @ Munna. The appellant is not entitled to the same benefit.

8. In view of the above, we do not find any merits in the present appeal and the same is dismissed confirming the conviction and sentence of the appellant under Section 302 read with Section 34 of the Indian Penal Code with Section 27 of the Arms Act.

.....J. (N.V. RAMANA)J. (MOHAN M. SHANTANAGOUDAR)J. (SANJIV KHANNA) NEW DELHI;

MAY 26, 2020.