State Uttar Pradesh vs Nahar Singh (Dead) & Ors on 18 February, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1328, 1998 (3) SCC 561, 1998 AIR SCW 1200, 1998 ALL. L. J. 946, 1998 UP CRIR 411, 1998 CRIAPPR(SC) 138, (1998) 2 ALLCRILR 250, (1998) 1 EASTCRIC 945, (1998) 36 ALLCRIC 608, (1998) 23 ALLCRIR 956, (1998) 1 MADLW(CRI) 365, (1998) 1 RECCRIR 867, (1998) 1 SCR 948 (SC), (1998) 1 SCALE 699, (1998) 2 CURCRIR 24, 1998 CRILR(SC MAH GUJ) 224, (1998) 2 SUPREME 139, (1998) 3 SCJ 117, (1998) 2 JT 41 (SC), 1998 SCC (CRI) 850, (1998) 2 EASTCRIC 607, (1998) 1 EFR 580, (1998) 1 ALLCRILR 325, (1998) 1 CRIMES 197, (1998) 2 CHANDCRIC 19

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Bench: G.T. Nanavati

PETITIONER:
STATE UTTAR PRADESH

Vs.

RESPONDENT:
NAHAR SINGH (DEAD) & ORS.

DATE OF JUDGMENT: 18/02/1998

BENCH:
G.T. NANAVATI, SYED SHAH MOHAMMED QARDRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T QUADRI, J.

These four appeals arise from the common judgment of the Division Bench of the Allahabad High

Court dated October 3, 1985, in four criminal appeals (Nos. 1846 of 1984, 1930 of 1984, 2870 of 1971 and 2871 of 1984) and Referred Case No.5 of 1984. The Allahabad High Court allowed Criminal Appeal No. 1846 of 1984 filed by Nahar Singh (A-1) and Criminal Appeal NO. 1830 of 1984 filed by Shishupal Singh and Ram Gopal, A-2 and A-6 respectively; dismissed Criminal Appeal No. 2970 of 1984 filed by the State of Uttar Pradesh against the acquittal of Liyaqat Ali (A-3), Rakshpal Sing (A-4, Durgpal Singh (A-5), Bhagat Singh (A-7), Hari Shankar Singh (A-5), Hari Shankar Singh (A-8) and Criminal Appeal No. 2871 of 1984 against the acquittal of Brijendra Pal Singh and Satendra Pal Singh. The above said eight persons (A-1 to A-8) and Brijendra Pal Singh and Satendra Pal Singh were tried by the learned IIIrd Additional District and Session Judge, Ethane in Sessions Trial No.43 of 1981 and Sessions Trial No. 144 of 1981, respectively, clubbing those two cases together, for various offences punishable under different provisions of Indian Penal Code indicated below.

By judgment dated 3rd July, 1984, the learned Sessions Judge found Nahar Singh (A-1) quality of offences punishable under Sections 148, 302 (simplicitor), 449 and 201 IPC, sentenced him to death under Section 302 IPC, subject to confirmation by the High Court; sentenced him to undergo two years' rigors imprisonment under Section 148 IPC, seven year's rigors imprisonment under Section 449 IPC and four years' rigorous imprisonment under Section 201 IPC. Shishupal Singh (A-2) and Ram Gopal (A-6) were found quality of offences under Sections 148, 302/149, 449 and 201 IPC and were sentenced to undergo imprisonment for life under Section 302/149, IPC, two years' rigorous imprisonment under Section 148 IPC, seven years under Section 449 IPC and five years' rigorous imprisonment under Section 201 IPC. The sentences of imprisonment were directed to run concurrently. The other accused persons, namely, Liyaqat Ali, Rakshpal Singh, Durgpal Singh, Bhagat Singh, Hari Shankar, Brijendra Pal Singh and Satendra Pal Singh, were held not quality of offences punishable under Section 147, 148, 392/149, 449 and 201 IPC and they were accordingly acquitted of all the charges levelled against them.

The events leading to the ghastly murders on the fateful day, October 4, 1980, had their genesis in the murder of Kunwar Pal Singh, father of Nahar Singh in 1978, in respect of which he gave a complaint against Ram Gopal, Vijay Pal, Shyam and Bhupinder Singh. Thereafter, there have been murders allegedly by the members of the rival groups. In the instant case, the case set up by the prosecution is that on that day at about 6.30 P.M., Ram Gopal, his son, Satendra Pal Singh (PW-1) and his brother Krishan Gopal (PW-

2) were sitting at the Baithak of his house in village Patna and were talking to Saheb Singh, resident of Nagla Madhupur (father-in-law of his sons, Jitendra Singh), when Nahar Singh, Shishupal Singh, Ram Gopal (another person of the same name) all residents of village Patna, Bhagat Singh, resident of village Lakhnai, Hari Shankar (brother of Nahar Singh), Liyaqat Ali, Durgpal Singh, Rakshpal Singh, Bhagat Singh, Vijendra Pal Singh, Hari Shankar and Satendra Pal Singh Accompanied by seven or eight unknown persons arrived there armed with guns, pistols, spears and lathis and caught hold of Ram Gopal who was shot dead by Nahar Singh, Some of them then present uttered that Vijay Pal Singh And Manpal were at their houses. The then proceeded to the house of Vijay Pal Singh where Nahar Singh fired at Manpal causing his instantaneous death. On seeing this, Vijay Pal Singh rushed to a room inside the house, bolted the door from inside but the followed him, broke open the door with the help of axe and then Nahar Singh fired at Vijay Pal Singh who died then and

there. They dragged the dead bodies of Manpal and Vijay Pal Singh to the house of Ram Gopal where Nahar Singh again fired at the dead body of Ram Gopal. Then, all the three dead bodies were dragged to the open land lying behind the Junior High School, put them on the heap of dung cakes and lit fire to them. They kept a watch on the road near Junior High School upto 5.00 A.M. On early morning of 5th October, 1980, PW-1 went to the police station along with the written report already prepared at his house in the night at about 2.00 A.M. and handed over the same (Exh. Ka) in the police station to the Head Constable, Pyare Lal, at 7.00 A.M., who prepared check report (Exh.Ka-13). Rajender Singh Asthana, Sub-Inspector (PW-16) took up the investigation. He found three half burnt dead bodies on the vacant land behind the Junior High School, Patna. He prepared inquest report and sent the dead bodies for post- mortem examination through Constable Gajender Pal and Rajender Pal. Thereafter, he recorded the statements of PWs. 1,2,3 and 5 (eye witnesses). proceeded to house of deceased Ram Gopal, prepared recovery memo of empty cartridges and collected the blood stained earth the plain earth which was found in front of his house. He then went to the houses of Vijay Pal and Manpal, the victims. He noticed the marks of dragging of the dead bodies from their houses to the Junior High School where the bodies were dept on the heap of dung cakes and burnt. He also found blood at two places in front of the house of Vijay Pal and also inside the house and collected the blood stained earth and plain earth and prepared recovery memo. He found ten pellets and two wads inside one of the rooms of the house of Vijay Pal, where he was murdered.

Dr. O.P. Vaidya (PW-4) conducted the post-mortem examination on the remains of the bodies of the said three deceased persons and prepared report (Exh.Ka-3). He opined that the burnt bones and parts of the body were of human beings. He could not ascertain the sex, age and stature of the persons whose remains were sent for post-mortem examination. He, however, opined that the death was the result of the fire arm injuries sustained by the deceased persons. In the test identification held at District Jail. Etah on 31st March, 1981. Vijender Pal and Satender Pal were identified by the prosecution witnesses but Hari Shankar could not be identified by them.

On the application of the accused persons for investigation by CID, the case was entrusted to Devinder Singh (PW-17), CB CID Inspector, who after completing the investigation submitted the chargesheet against eleven persons of whom one Khajanchi was discharged by the trial court under Section 227 Cr. P.C. The cases proceeded against the remaining ten persons noted above. The prosecution produced eighteen witnesses out of whom PWs.1 to 3 and PW-5 are eye witnesses. PW-1 is the son and PW-2 is the brother of the deceased Ra, Gopal; PW-3, Anusuiya, a girl of nine years is the daughter of Manpal and PW-5, Kaila Devi, is the widow of Vijay Pal Singh. On consideration of the material on record, the learned IIIrd Additional District and Sessions Judge found the above said three accused quality of offences and awarded them various sentences noted above, and acquitted the remaining seven accused.

It has already ben mentioned that on appeal by the said convicted accused (A-1, A-2 and A-6), the High Court set aside the conviction and sentence and allowed their appeals and dismissed the appeals filed by the State against the acquittal of the seven accused.

In these appeals, it is brought to our notice that Nahar Singh (A-1), who was on bail, was murdered on October 20, 1986. The appeal relating to Nahar Singh, therefore, abated.

In the appeal relating to Shishupal Singh and Ram Gopal, Sri G.K. Mathur, the learned senior counsel appearing for the State of Utter Pradesh, has contended that the trial court has correctly assessed the evidence on record and after elaborate discussion found A-2 and A-6 quality of offences charted and that the High Court was not justified in acquitting A-2 and A-6 for reasons which are trivial and contrary to the evidence. The learned counsel for the said respondents supported the reasons given by the High Court and argued that after thoroughly examining the evidence, the High Court found them not quality and it is not a case which warrants interference in the appeal against acquittal.

To appreciate the contentions of the learned counsel, we have gone through the judgments of the trial court and the High Court and the evidence on record. The trial court believed the evidence of PW-1 (an eye witness) who spoke to the fact that Nahar Singh and Shishupal Singh were armed with guns and Ram Gopal was armed with Ballam (spear) and they were amount the bandits who committed the murder of the deceased Ram Gopal. The evidence of PW-1 was corroborated on all the material facts by PW-2 (another eye witness). The statement of the third eye witness, PW-3, although a child witness, was also relied upon by the trial court, noting that she was consistent in her statement that Nahar Singh and Shishupal Singh were armed with gunned and that Ram Gopal was armed with Ballam (spear) when Nahar Singh murdered her father in front of the house of Vijay Pal Singh. She specifically stated that Nahar Singh fired at Vijay Pal Singh from his gun and Vijay Pal Singh died of gunned shot. The presence of those witnesses was believed by the trial court as well as by the High Court at the time of occurrence. PW-5, yet another eye witness, also stated that on the date of occurrence at about 6.30 P.M., there was twilight and a lamp was also burning in the house when Nahar Singh, Shishupal Singh and Ram Gopal entered her house. Nahar Singh dragged Vijay Pal out of Kotha and Vijay Pal Singh was murdered by Nahar Singh stating that he alone would kill him. Thus, statements of PWs.1 and 2 established that Nahar Singh had murdered the deceased Ram Gopal and that of PWs.3 and 5 that he also committed murder of Manpal and Vijay Pal and that at that time Shishupal Singh was also armed with gun and Ram Gopal was armed with spear. Relying on the oral evidence of the above said eye witnesses and the evidence of Dr. O.P. Vaidya (PW-4) the trial court found A- 1, A-2 and A-6 quality of offences charged.

The High Court accepted the testimony of PWs. 1,2,3 and 5 and that of PW-4 (Doctor) and held that it was established that Ram Gopal, Manpal and Vijay Pal were done to death in the morning of 4th October, 1980. However, observing that though Ram Gopal (A-6) was said to have been armed with spear, according to the evidence of their witnesses recorded by the trial court, yet no weapon or role was assigned to him in the FIR, the High Court concluded that it was difficult to hold that the prosecution has succeeded in proving his quilt and set aside the conviction of and sentence awarded to A-6. Regarding Shishupal Singh (A-2), the High Court noted that he was said to have been armed with gun by the witnesses before the court and in their statements recorded by the second investigating officer (PW-

17), after a lapse of two months of the occurrence, although no weapon was assigned to him in the FIR, or in the statements given to the first investigating officer (PW-16). It also noted that no specific role was assigned to him either in the FIR or in the statements by the witnesses. These factors together with the findings that there was delay in lodging the FIR and the explanation for delay was not convincing: the FIR was filed after consultation and that here was o light at the time of occurrence oat about 6.30 P.M., either at house of Ram Gopal or at the house of Vijay Pal to enable the witnesses to recognize the assailants of the three deceased persons, weighed with the High Court to conclude that the prosecution had failed to prove the guilt of A-2 and A-6 beyond shadow of doubt.

On careful reading of the evidence of PWs. 1,2,3 and 5, which was accepted by the High Court to record the finding that Ram Gopal, Vijay Pal Singh and Manpal were murdered on the evening of 4th October, 1980, we are of the opinion that reasons given by the High Court to acquit A-2 are hardly sufficient to justify interference with the well considered judgment of the trial court finding them quality of offences under Sections 302, 148 and 201 IPC.

Now, we shall examine those reasons. The High Court laid some emphasis on certain aspects dealing with the FIR; firstly delay in filing the FIR, which remained unexplained, and also on the fact that there was consultation before filing the FIR. The evidence on record discloses that gruesome murder of the deceased persons was committed by the appellants and others who dragged the dead bodies to the rear side of the Junior High School, placed them on the heap of dung cake and burnt them there. The assailants were keeping a watch on the road throughout the night. The atmosphere there was awesome. In such circumstances, late in the night no reasonable person would have dared to go to the police station to lodge the complaint. PW-1 stated that he noticed that the assailants left the place at about 5.00 A.M. He then proceeded from the house to go to police. Thus, he lodged complaint at the earliest possible time. It has come in evidence that the distance from the scene of occurrence to the police station can be covered in about two hours. The complaint was given in the police station at about 7.00 A.M. This account, in our view, is a good and sufficient explanation for the delay in giving the complaint explanation for the delay in giving the complaint to police by PW-1.

It may be noted here that that part of the statement of PW-1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence PW-1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provisions is enlarged by Section 146 of the Evidence Act by a allowing a witness to be questioned:

> (1) to test his veracity.
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> (2) to discover who he is and what is his position in life, or (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

The oft quoted observation of Lord Herschell, L.C. in Browne vs. Dunn [(1893) 6 The Reports 67] clearly elucidates the principle underlying those provisions.

It reads thus:

> I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-
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> examination showing that imputation is intended to be made, and not to take his evidence and pas it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses. This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing.
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> Regarding preparation of the FIR in consultation with others, it is noticed that this is spoken to by PW-2 who is the brother of the deceased Ram Gopal. The complaint is said to have been prepared by PW-1, son of the said Ram Gopal, late in the night at about 2.00 A.M. When there are two male members of the family who were grief stricken, it was but natural that PW-1 and his uncle (PW-2) should talk about giving the complaint and draft the same. The fact, in the circumstances of this case, can hardly be a ground to weaken the case of the prosecution.
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> The third aspect pointed out by the High Court is, no motive was assigned to A-2 to join hands with A-1 for commission of the offences. When the participation of the accused A-2 is established by the evidence of eye witness, absence of motive pales into insignificance and cannot be a ground to justify his acquittal.
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> The last facet is that no weapon or role was assigned to A-2 and A-6 in the FIR and that hose facts were stated in the statement recorded by the second investigating officer (PW-17) much later. It will he useful to read here the relevant portion of the FIR, which is in the following terms:
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> "That at that time Nahar Singh s/o Bhanwarpal Singh, Shishpal s/o Ishwarpal Singh, Layakat Ali s/o Raffique, Rakshpal Singh s/o Kamal Singh and Thakur Ram Gopal s/p Bhikey Jatav of my village and Bhagat Singh r/o Lakhanai P.S. Jalessur and

> Harishankar s/o Mohinderpal Singh, Brother-in-law of Nahar Singh of Shehzadpur P.S. Hathras Distt. Aligarh and 7-8 others persons whom I do not know by name but can identify if fact to face, came at once from in front of the house helping gun, pistol, ballam, lathie etc, and caught hold of my father who was lying on the cot and shot him dead. This incident was witnesses by the women and children of our family*...*.
> A perusal of the above excerpt of the FIR shows that it is not a case where weapons and different roles are assigned to some of the accused but no weapon of role is assigned to A-2 and A-6. The purpose of recording Fir under Section 154 of the Criminal Procedure Code is to set the investigating agency in mooting for prosecuting the persons responsible for the cognizable offence mentioned in the FIR. Though the FIR should not be too sketchy or vague, yet non-mentioning of the details and meticulous particulars is not ground to reject the case of the prosecution [Sec 1979 Criminal Law Journal 1295]. Therefore, the omission pointed out by the High Court is not fatal to the case of the prosecution.
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> Yet another ground which impressed the High Court is about identification of the assailants who took part in the commission of the offences. The High Court observed that the time was 6.30 P.M., it was dusk. lantern was burning at the scheme of the occurrence and there was no sufficient artificial light which could enable the eye witnesses to identify the assailants. That part of the statement of PW-5 which is referred to by the High Court to infer that there was no light to identify the assailants, reads as follows:
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> "Sham Ke Sade Chhe Baje Samaye Tha. Suraj Doob Chuka Tha. Suraj Chhip Gaya Tha, Magar Roshni Thi" Us Samaye Ghar Me Lalten Jala Li Thi. Lalten Isliye Jala Li Thi Ki Dono Wakt Mil Gaye The."

From the above quoted statement, it is evident that the time was 6.30. and that though the sun had set, yet there was light and at that time the lantern was also lighted. She had given the explanation for lighting the lantern as Dono Wakt mil; gaye the". It is a colloquial phrase which means that the day time was over and the evening time had commenced. At that time, it won't be too dark to see the person particularly when they are known. Further, when the light was enough to enable the assailants to identify their victims and kill them, it can hardly be contended, much less accepted, that the light was not enough to identify the assailants.

The principle with regard to interference in the appeal against acquittal under Section 378 Cr.P.C. are well established. While dealing with the power of the High Court to reverse an order of acquittal on a matter of fact, Lord Russell of Killowen, speaking for the Privy Council, in Sheo Swarup & Ors. vs. King Emperor (AIR 1934 S.C.227). observed thus:

> "There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fac t, except in cases in which the lower Court has `through incompetence, stupidity or perversity' reaches such `distorted

conclusions as to produce a positive miscarriage of justice', or has in some other was so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result. Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order to acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fac t, the High Court should and will always given proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage or seeing the witnesses.

To state this however is only to say that High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

These principles have been approved and followed in numerous decisions of the Supreme Court. To mention a few, see Paramdas vs. The State (AIR 1954 SC 36); Sanwat Singh vs. State of Rajasthan (AIR 1961 Sc 715 = 1961 (3) SCR

120).

In State of U.P. vs. Krishna Gopal & Anr. (1988 (4) SCC

302), M.N. Venkatachaliah, J. (as he then was) summarised the principle as follows:

"The plenitude of the power of the appellate court to review and reappreciate the evidence cannot be limited under the supposed rule that unless there are `substantial' or `compelling' reasons' or `strong reasons', the findings in a judgment of acquittal should not be interfered with. There is thus no immunity to an erroneous order from strict scrutiny. But the appellant court whenever it finds justification to reverse an acquittal must record reasons why it finds the lower court wrong."

In Ajit Savant Majagvai vs. State of Karnataka (1997 (7) SCC 110), the above noted principles have been approved and restated.

If on re-assessment of the evidence, the appellate court comes to the conclusion that the quilt of the accused is established, the fact that the appeal is against the acquittal will be immaterial. However, if two views are possible, the court, having regard to the basic principle that presumption of innocence of the accused gets strengthened by the fact of his acquittal by court, should take the view that supports the acquittal of the accused.

For the above reasons, we hold that the view of the evidence taken by the High Court is erroneous and that it misled itself in coming to the conclusion that the quilt of A-2 and A-6 was not established; we are of the view that prosecution has proved the quilt of the accused beyond any reasonable doubt. The trial court was, therefore, right in convicting them and that the High Court was not justified in interfering with the conviction and sentence of Shishupal Singh (A-2) and Ram Gopal (A-6) on grounds which are hardly sustainable in law. Accordingly, judgment of the High Court dated October 3, 1985 in Criminal Appeal No. 1830 od 1994 is set aside, judgment of the trial court dated 3rd July, 1984, insofar as it related to A-2 and A-6, is restored and Shishupal Singh (A-2) and Ram Gopal (A-6) are directed to be taken into custody to serve their sentences. The appeals filed by the State against the said respondents (Respondents Nos.2 and 3) are allowed, as indicated above, and they are dismissed against other respondents.