State Of U.P vs Anil Singh on 26 August, 1988

Equivalent citations: 1988 AIR 1998, 1988 SCR SUPL. (2) 611, AIR 1988 SUPREME COURT 1998, 1988 (3) JT 491, 1989 SCC(CRI) 48, 1988 CRIAPPR(SC) 246, 1988 (17) REPORTS 634, 1988 IJR 399, 1988 ALL WC 1264, (1989) SC CR R 5, (1988) EASTCRIC 681, (1988) ALLCRIR 621, (1988) 3 CRIMES 367

Author: K.J. Shetty

Bench: K.J. Shetty, G.L. Oza

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
ANIL SINGH

DATE OF JUDGMENT26/08/1988

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
OZA, G.L. (J)

CITATION:
1988 AIR 1998 1988 SCR Supl. (2) 611
1988 SCC Supl. 686 JT 1988 (3) 491
1988 SCALE (2)436
CITATOR INFO :
R 1988 SC2013 (15)

ACT:
Constitutiion of India, 1950: Article 136-Under article 136 the scope of appeal very limited-Even if two views reasonably possible court will not interfere with order of acquittal-Court will also not hesitate to interfere if the acquittal is perverse.

HEADNOTE:
The respondent Anil Singh was tried for the murder of Keshav Kumar, his erstwhile friend and classmate. The Trial Court convicted the accused and sentenced him to

imprisonment for life. The High Court doubting the credibility of the eye-witnesses, discarded the prosecution case and acquitted the respondent.

Allowing the appeals, it was,

HELD: (1) The scope of appeals under Article 136 of the Constitution is undisputedly very limited. This Court does not exercise its overriding powers under Article 136 to reweigh the evidence. Even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. But the Court will not hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust. [6l6A]

State of U.P. v. Yushoda Nandan Gupta, AlR 1974 SC 753 and State of A. P. v. R. Anjaneyulu, AIR 1982 SC 1598, referred to.

(2) The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. [6l7B-D]

(3) It is welt to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. The Court should made an effort to disengage the truth from falsehood and to sift

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the grain from the chaff rather than taking an easy course of holding the evidence discrepant and discarding the whole case as untrue. [617C-D; 617F]

Bankim Chander v. Matangini, 24 C.W.N. 626 PC and Abdul Gani v. State of Madhya Pradesh, AIR 1954 SC 31, referred to.

(4) Invariably the witnesses add embroidery to the prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if there is a ring of truth in the main. [6l7G]

It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform. [6l7G-H; 618A]

(6) The Court gave its anxious consideration to all material facts and circumstances of the case and came to the conclusion that the decision of the High Court could not be supported. [622C]

JUDGMENT:

CRIMINAL APPELLATE JURlSDICTlON: Criminal Appeal No. 671-672 of 1980.

From the Judgment and Order dated 17.4.1980 of the Allahabad High Court in Criminal Appeal No. 2340 of 1978. A.N. Mulla, Yogeswar Prasad, Mrs. Sarla Chand, Girish Chand, Ms. Rachna Joshi and D. Bhandari Advocate (N.P.) for the Appellant.

Frank Anthony. J.K. Das, J.R. Das and S.K. Patri for the Respondent .

The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. The State of U.P. and the informant have preferred these appeals with special leave, challenging the order of acquittal recorded by the Allahabad High Court in Criminal Appeal No. 2340 of 1978. Anil Singh, the common respondent in the appeals was tried for the PG NO 613 murder of Keshav Kumar (`K-K') by the Court of Session (Non- Metropolitan area), Kanpur. He was convicted and sentenced to imprisonment for life. But on appeal, he was acquitted by the High Court.

The prosecution story of the occurrence may be stated at some length.

The respondent-accused and KK were almost of equal age. They are friends as well as class mates. They were also co- accused in some minor criminal cases. The accused was of violent temperament. He used to indulge in criminal activities. His father sent him to his maternal grandfather's house at Faizabad for being better taken care of. But he used to visit often his native place i.e. Pukhrayan, where KK was residing. The accused was in the habit of demanding money from KK. At the time of Diwali festival of the year -i977, the accused asked KK to pay Rs.2,500. He wanted to purchase a revolver. It is alleged that he even threatened KK that he would be killed if the amount was not paid by November 14, 1977. November 14, is a rejoicing day for children. It is a birth day anniversary of Pt. Jawahar Lal Nehru who was the first Prime Minister of this Country. The children all over called him and still remember him as "Cha Cha Nehru". Every year his birth day is celebrated as "Children Day" throughout the country. On that 14 November 1977, local Jaycees Club arranged Bal-mela and cultural programme. It was arranged in the Normal School compound `with sweet-meet and chat-shops. Bal-Mela went on till 7 p.m. The cultural programme was to commence at 8 p.m. In between KK was murdered.

It is said that the accused and KK came to Bal-Mela. From there the accused went along with KK to a nearby place, that is the varandah of Dr. Diwedi's shop. There he assaulted KK with knife. Prahlad Kumar who is the eldest brother of KK and some others rushed to the spot. But the accused could not be caught. Nor KK could be saved. The accused was chased but he ran away by brandishing his knife. The fatally injured KK was seen walking a few steps and falling down in a `Nali'. Prahlad Kumar lifted him and carried up to some distance for medical attention. But on the way near Khazanchi hotel, KK succumbed to in juries. Prahlad Kumar carried the dead body of his brother to his house. So many people followed him. The Sub-Divisional Magistrate and Tehsildar who were the

guests of honour at the function also went to his house. Ramesh Chander Dube a PG NO 614 social worker and politician was very much there. Prahlad Kumar wrote a report giving fairly all particulars of the occurrence. He took a scooter and went to Police Station Bhoginpur which is just two miles away from his house. Ramesh Chander Dube accompanied him. They lodged the report at 9.15 p.m. at the Police Station.

Kaushal Chand Tripathi Sub-Inspector was then incharge of the Police Station. He was present when the report was lodged. He got the case registered. He immediately went to the scene of occurrence. He also visited the house of the deceased. He found the dead body lying on a bench. He conducted the inquest proceedings. Ex. Ka. 1 is the inquest report. He sent the dead body with Constables Aley Hasan and Trijugi Narain for post-mortem. Thereafter he recorded statements of persons. He examined witnesses including Chottey Lal (PW 2). In the course of interrogation of persons, he came across a boy called Raju. He took his statement who has been later examined as PW 3 in the case. On the following morning at 5.45 a.m., the Investigating Officer again went to the scene of occurrence. He prepared a sketch map Ex. ka. 13. He found blood stains on the furniture lying in the varandah of Dr. Diwedi's shop. He got removed two pieces of a bench (Ex. 3 & 4) and one piece of table (Ex. 5) which were stained with blood. A memo Ex. Ka. 15 was prepared in respect thereof. Similarly, he collected blood stained and unstained earth from the Nali (Ex. 6 & 7). A memo Ex. Ka. 16 was also prepared in evidence thereof. He also collected blood stained earth from the Patti under the Memo Ex. Ka. 14.

The Investigating Officer then directed his officers to search and arrest the accused. But accused was not traceable in the town. The proceedings were initiated under s. 82/83 Criminal Procedure Code. On 17 November 1977, he obtained warrant of arrest (Ex. Ka. 17). The Sub-Inspector Sital Prasad was deputed to execute the warrant. On 21 November 1977 proclamation and warrant of attachment (Ex. Ka. 18 & Ka. 19) were obtained and executed properly. The property of accused was attached under Memo Ex. Ka. 20. It was only thereafter the accused appeared in the Police Station Kotwali. On 26 November 1977 he was arrested at Kotwali. Before the trial court, the prosecution in support of the case examined Prahlad Kumar (PW 1), Chhotey Lal (PW 2) and Raju (PW 3) as eye-witnesses to the occurrence. Rest of the evidence of prosecution is more or less formal. On the other side, Ramesh Chander Dube (DW 1), Karan Singh (DW 2), PG NO 615 Balak Das (DW 3) and Shri Prasad (DW 4) were examined as defence witnesses.

The trial Court upon consideration of all the material on record accepted the case made out by the prosecution. The trial Court convicted the accused for the murder of KK and sentenced him to imprisonment for life.

The High Court of Allahabad set aside the conviction and sentence, and acquitted the accused. The High Court first surveyed some broad aspects of the case and reached the conclusion that the relations between the family of accused and KK were strained. The High Court then considered the evidence of eye-witnesses and disbelieved them by attaching one or the other doubt against their credibility. Prahlad Kumar (PW 1) was disbelieved on the grounds: He did not disclose the name of person who first informed him about the assault on KK. He did not disclose the name of accused to the Sub-Divisional Magistrate and Tehsildar when they came to his house. He did not ask them to

call the Police and get the accused arrested. The High Court observed:

> "Sub-Divisional Magistrate is incharge of a Sub-Division and has to maintain law and order. The Police ordinarily acts under his directions. In these circumstances had Prahlad Kumar seen the occurrence and the assailant he should have immediately made a complaint to the Sub- Divisional Magistrate who came up soon after the occurrence. The silence of Prahlad Kumar in this respect is clearly indicative of the fact that he had neither seen any part of the occurrence nor he had seen the assailant. Chhotey Lal (PW 2) was characterised as a chance witness. His presence at the place of occurrence was doubted with the following observations:
>
> "Another fact which is conspicuous in his statement is that he and his 2 companions left the market at the time of sun set for their village. In the middle of November the time of setting in of the sun is about 5.30 p.m. There is dusk for about 45 minutes. Thus it appears that these three persons left the market if not at about 5.30 p.m., then alteast at about 5. 15 p.m. They could easily cover distance of 2 miles in an hour's time. Therefore, by 7.15 p.m. they could have easily reached their village. In this circumstance it does not stand to reason that they left the PG NO 616 market at 7.30 or 7.45 p.m. From this aspect of the matter the version given by Chhotey Lal about his presence at the time of occurrence is not fee from doubt."

The testimony of Raju (PW 3) was rejected by stating that he was a child witness. that he did not figure in the FIR as an eye-witness, and his explanation for his presence at the spot was not reasonable. The High Court said:

> "He has stated that his elder brother had told him to come up early and that on account of fear of being beaten by his brother he left the chabutara and proceeded towards his house. It will be noticed that he had left the Mela area with his Thela at about 7.30 p.m. It is thereafter that he again returned to the Mela area he took 10-15 minutes in shifting the chairs from the place of his shop to the dais of the drama. It is evident that just 15 minutes later he left the Mela area. Assuming for a moment that his brother had told him to come early it did not mean that he would return to the house within less than half an hour. Moreover, he did not tell the Investigating Officer that he left the Mela so soon on account of fear of his brother. We are, therefore, of the opinion that Raju has not given a reasonable explanation of his leaving the Mela area within about 15 minutes of his keeping the chairs near the place of drama. Therefore, his presence at the time of assault cannot be believed."

With these and other conclusions, the High Court discarded the prosecution case.

Hence these appeals.

The scope of appeals under Article 136 of the Constitution is undisputedly very much limited. This Court does not exercise its over-riding powers under Article 136 to reweigh the evidence. The Court

does not disturb the concurrent finding of facts reached upon proper appreciation. Even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal, [See:(i) State of U.P. v. Yashoda Nandan Gupta, AIR 1974 SC 753 and (ii) State of A.P. v. P. Anjaneyulu, AIR 1982 SC 1598] But this Court will not hesitate to interfere if the acquittal is perverse PG NO 617 in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust.

On late this Court has been receiving a large number of appeals against acquittals and in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. The Privy Council had an occasion to observe this. In Bankim Chander v. Matangini, 24 C.W.N. 626 PC, the Privy Council had this to say (at 628):

> "That in Indian litigation it is not safe to assume that a case must be false if some of the evidence in support of it appears to be doubtful or is clearly unture, since there is, on some occasions, a tendency amongst litigants to back up a good case by false or exaggerated evidence."

In Abdul Gani v. State of Madya Pradesh AIR 1954 SC 31 Mahajan, J., speaking for this Court deprecated the tendency of courts to take an easy course of holding the evidence discrepant and discarding the whole case as untrue. The learned Judge said that the Court should make an effort to disengage the truth from falsehood and to sift the grain from the chaff.

It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to PG NO 618 remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

In the instant case, the trial judge and the High Court have accepted the fact that the report to Police was lodged by Prahlad Kumar (PW 1) at 9.15 p.m. That means that the report disclosing the name of accused did reach the Police Station immediately after the murder. This is a positive finding in favour of prosecution. The report contains all particulars including the motive for the crime and the

manner in which it was committed. It gives us the names of eye-witnesses as well. It also gives a clear picture as to what KK did after the attack and how the accused made good his escape.

It was argued by Shri Frank Anthony, learned senior counsel for the accused that it would be impossible for any person to prepare such an exhaustive report and lodge the same before the Police so soon after the occurrence. According to counsel, the report must have been prepared after the inquest and non-mentioning of the time of despatch of FIR to the Court would lend support to his submission. We carefully examined the material on record. We are unable to accept the submission of learned counsel. In the first place, PW 1 was not specifically cross examined on this matter. The Court cannot therefore, presume something adverse to the witness unless his attention is specifically drawn to. Secondly, the records contain unimpeachable evidence to the contrary. Apart from the records of the Police Station, the Panchayatnama (Ex. Ka. 7) to which Ramesh Chandra Duty(DW 1) has admittedly appended his signature shows that the reporting time of the crime was 9.15 p.m. DW 1 accompanied Prahlad Kumar to Police Station to lodge the report though he later defected to the defence. He is a political figure and social worker. Highly qualified too. He would not have signed the Panchayatnama if the statement therein were not true and correct. Equally there cannot be any dispute about the place of commission of crime. It was committed in front of Dr. Diwedi's shop. Portions of the blood stained furniture have been collected from the place (Ex. Ka. 15 & 14). It has been proved by the evidence of the Investigating Officer (PW 7). His evidence remains unchallenged.

If we critically examine the evidence of PW 1 there is nothing to PG NO 619 doubt the correctness of the version given by him. He was one of the persons who organised the programme. His presence at the place was therefore quite natural. He has testified to the presence of KK going with the accused at the Bal- Mela. It is an evidence of the last seen together. It is an important piece of evidence. PW 1 could not be disbelieved on the gound that he did not mention the name of accused to Sub-Divisional Magistrate and Tehsildar. Nor his evidence could be doubted on the ground that he did not seek the assistance of the said officers to secure the police help. It is unthinkable that the Sub-Divisional Magistrate and Tehsildar were not kept informed about the assailant. The crime was committed at a public place crowed by persons. They had assembled there to witness the cultural programme. The Sub-Divisional Magistrate cancelled the cultural programme because of commission of the crime. The people would have naturally asked why the programme was cancelled? Who murdered whom and why? It is a natural human tendency in such situations. The news of the murder must have spread like a wild fire. The name of accused must have been known to everybody gathered there. It is unfortunate that the High Court overlooked these circumstances.

The other reason given by the High Court to discard the evidence of PW 1 is that he did not disclose the name of person who first informed him about the murderous attack on KK. This reasoning of the High Court apparently reveals a lack of experience of man and matters. There was a big gathering at the Normal School Compound. The people were waiting to see the cultural programme. It was to commence at 8.00 PM. The time was hearing. PW 1 was at the stage as be was one of the organisers. He was then informed that his brother KK was being assaulted by the accused. The first impulse of PW 1 must have been to rush to the scene of occurrence and not to remember the name or identity of person who informed him. The place of occurrence was hardly about 25 paces from the stage set for cultural programme. PW 1 must have rushed to the place in a minute. There must have been

some altercation between the accused and KK. It could have taken some time. PW 1 must have reached within that time. The medical evidence supports this version. There are as many as eight incised wounds on KK. The doctor has stated that KK could have survived 10-15 minutes after the assault and moved 15-2() paces. PW I has stated that KK went towards Nali and fell down. He along with Dhruv lifted KK from the Nali and carried him towards the clinic of Dr.Mishra. Even the defence witness Ramesh Chander has admitted that PW 1, Dhruv and others were present at the Nali where KK was lying injured. It is, therefore, quite unreasonable to hold that PW 1 could not have seen the assault on KK.

PG NO 620 It was, however, urged that there was no light in front of the shop of Dr. Diwedi and PW 1 or other witnesses could not have identified the accused. Shiv Prasad Mishra (DW 4) has been produced to testify that the street mercury light was not burning on that day. We may accept the evidence of DW 4, but we cannot accept that there was no lighting arrangement at the public function. The Sub-Divisional Magistrate and Tehsildar were present at the function. Bal Mela commencing at 7.00 PM and cultural programme at 8.00 PM could not have been arranged in darkness. Theprosecution witnesss have stated that apart from the lighting arrangement at the function, there was an electric light in front of the shop of Dr. Diwedi. It is also on record that there was another light near the Khazanchi hotel. Quite natural the area must have been well-lit for the function. That apart, the accused was not a stranger to the place. He was at any rate familiar to PW 1'and his family members. There was, therefore, no scope for any mistaken identity of the accused.

The reason given by the High Court for disbelieving the evidence of Chhotey Lal PW 2 is fanciful. PW 2 is a resident of the village Astiya. The village is at a distance of two miles from Pukhrayan town. It will be seen from his evidence that he along with Baijnath and Manuwa maharaj-all residents of the same village had gone to the town for their requirements. PW 2 wanted iron nails, Manuwa required vegetables and Baijnath had to purchase iron rods. After purchasing the respective goods, they proceeded toward their village. When they reached the tehsil, they came across 3- 4-5 boys who told them that there was Bal Mela and cultural programme in the Normal School. It was natural for them to stay on to see the cultural programme. They came to their grain dealer. They kept their articles at his place and after some time they started towards the Normal School at about 7.30 or 7.45 PM. When they were approaching the Khazanchi hotel, they saw the accused assaulting KK. The evidence of PW 2 receives corroboration from PW 1. He figures as an eye-witness in the FIR. He cannot,therefore be categoried as a chance witness.

The accused tried to give negative evidence to show that the market in Pukhrayan town to every Monday was closed and, therefore, the presence of PW 2 was not probable. PW 2 has admitted that the market used to remain 'closed on every Monday, but the general merchandise and hardware shops are not closed. In our opinion, there is no reason to disbelieve the statement of PW 1.

The third eye-witness in this case is Raju PW 3. It seems to us that he is an important witness. He had the PG NO 621 courage to come forward to depose in favour of prosecution in spite of his father going as a defence witness. The trial court upon preliminary examination has opined that he is an intelligent boy and able to give rational answers to questions put to him. He was then a student of class IV in the Normal School. His father opened a chat-shop at the Bal Mela. PW 3 was in that shop.

There is no disput on this fact. According to him, after Bal Mela he arranged the chairs of his shop in front of the stage set for cultural programme. He met some of his friends and sat at the chabutara by the side of the stage. While leaving to his house, he saw a crowd by the side of Khazanchi hotel and stopped there to find out what was happening. It is quite natural for boys to peep into the crowd. He has deposed that he saw the accused hitting KK with knife, but out of fear he ran from that place. His house is situated at a distance of about 100 yards from the Mela ground. To cover that distance one cannot take much time. Nor it is necessary to give any sufficient cause for his presence at the place. One should bring to bear the knowledge and experience of life. Since he was a student of the Normal School, his presence at the place was natural. His name might not have been mentioned in the FIR, but that is understandable. PW 1 might not have remembered him or noticed him. He was in a hurry to rush to the spot to save his brother.

The Investigation Officer has deposed that when he started interogating witnesses at the spot, he came across Raju who said that he had seen the incident. His statement was immediately recorded. In the Court, Raju has been cross examined at the great length. But nothing substantial has been elicited to shake his credibility. What is significant to note in this context is the attempt of th father (DW3) to destroy the credibility of the son. His father as a defence witness has stated that after the Mela they had returned to house at about 6.30PM and thereafter they did not go out of the house for the Whole night. The trial court after carefully examining the testimony of DW 3 observed that he is absolutely unreliable. It has held that the testimony of DW 3 that he alongwith his son remained in the house after 6.30 PM and slept at about 8.30 PM is unworthy of belief since their house is admittedly at a close distance from the Normal School Compound. This observation of the trial court is not unjustified.

The post crime conduct of the accused cannot also be lost sight of. The plea of alibi has not been pursued. It has been proved that the accused was not available in the town after the occurrence till 34 November 1977. It is on record that the accused could not be traced and PG NO 622 proceedings under sec. 82/83 Cr. Penal Code were initiated. The warrant of arrest issued against the accused returned unserved. There-after proclamation was made and his property was attached. That was on 23 November 1977. He appeared on the next day in the Police Station Kotwali. That has been proved by the general diary entry (Ex.Ka. 22) of the said Police Station.

It may be noted that the investigation in this case was conducted without loss of time. Since the murder was committed at a public place where the Sub-Divisional magistrate and Tehsildar were present, the Investigating Officer must have been keen to arrest the accused immediately. That was perhaps the reason why he took proceedings under sec. 82/83 Cr.P.C. We must really appreciate the proper and prompt investigation made in this case.

We have given our anxious consideration to all material facts and circumstances of the case. It seems to us, that the decision of the High Court cannot be supported. In the result, we allow these appeals, set aside judgment of the High Court and rstore that of the trial court. The conviction and sentence awarded aginst the accused are restored. He shall undergo the remaining part of sentence.

R.S.S. Appeals allowed.