

Brijpal Singh And Other vs State Of U.P. And Others on 30 March, 1993

Equivalent citations: 1994 AIR 1624, 1994 SCC SUPL. (1) 566, AIR 1994 SUPREME COURT 1624, 1994 AIR SCW 1346, 1993 CRIAPPR(SC) 137, 1994 SCC(CRI) 419, 1993 (2) UJ (SC) 253, 1994 (1) SCC(SUPP) 566, (1993) 2 JT 574 (SC), 1994 SCC (SUPP) 1 566, (1993) 1 CRIMES 1116, (1993) 2 CHANDCRIC 172, (1993) ALLCRIR 399, (1993) MAD LJ(CRI) 622, (1993) ALLCRIC 358, (1993) 1 ALLCRILR 827

Author: G.N. Ray

Bench: G.N. Ray

PETITIONER:
BRIJPAL SINGH AND OTHER

Vs.

RESPONDENT:
STATE OF U.P. AND OTHERS

DATE OF JUDGMENT 30/03/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 AIR 1624 1994 SCC Supl. (1) 566
JT 1993 (2) 574 1993 SCALE (2) 338

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- This is a regular appeal under Section 379 CrPC read with Section 2 of the Supreme Court (Enlargement of Criminal

Appellate Jurisdiction) Act, 1970. There are six appellants. They along with one Kalyan Singh who died during the trial, were tried for offences punishable under Section 302 read with Section 149 IPC by the Additional District & Sessions Judge, Shahjahanpur and were acquitted. The State preferred an appeal +From the Judgment and Order dated December 22, 1983 of the Allahabad High Court in Govt. Appeal No. 2659 of 1976 against the remaining six accused. The High Court allowed the appeal. However, two of them A-5 Prem Pal Singh and A-6 Shyam Pal Singh who were children, were not awarded any sentence and the remaining four accused were sentenced to imprisonment for life. They were also convicted under Sections 324/149 and 148 and sentenced to two years' and one year R.1. respectively. The sentences were directed to run concurrently. All of them have preferred this appeal. The prosecution case is as follows.

2.All the accused are related to each other and are Thakurs by caste while the deceased Sripal and the injured witnesses are Kachuwahas and all of them belong to the same village Deshpur. The village is predominantly inhabited by Thakurs and there was animosity between the accused and the deceased. It is alleged that in the year 1933 Narpat, the father of Sikdar, PW 1 was murdered and the relations of the accused Kalyan Singh were charged for that murder and were convicted. In 1967 one Premwati and Muthu were joint owners of land and Premwati sold her share to Sikdar and Muthu objected to the mutation but mutation was allowed. Muthu having got annoyed mortgaged his half share in favour of Kalyan Singh with a view to harass Sikdar. It is further alleged that Kalyan Singh damaged the crop of Sikdar as a result of which proceedings under Section 145 CrPC were initiated and the land purchased by Sikdar was attached. On March 8, 1974 at about 10 a.m. Sikdar was passing near the attached land when he saw Prem Pal Singh, A-5 and Brij Pal Singh, A-1 damaging the pea crops. Sikdar made a complaint to Jai Singh, Superdar, PW 3 and went to the spot along with him. Superdar PW 3 reprimanded Prem Pal Singh and Brij Pal Singh which they did not like. The present occurrence took place at about 4 p.m. on March 8, 1974. Sikdar was sitting on the chabutra of Ram Singh in front of Chaupal along with Sheda and Rameshwar. Gokaran and Ram Lal, brothers of Sikdar and Sheoraj son of Sripal were also standing in front of their houses. It was Holi festival and offerings were to be made to the Holi fire as per the custom. Vijay Singh, a close relative of Kalyan Singh asked Sikdar to come and make offerings in the Holika i.e. Holi fire but Sikdar declined. Shortly thereafter Kalyan Singh and Deep Singh, A-4 armed with lathis, Prem Singh, A-5 armed with a gun, Brij Pal Singh, A-1, Ram Pal, A-2 and Shiv Mangal Singh, A-3 armed with country-made pistols came from the south. It is alleged that Kalyan Singh and Deep Singh accused pointed to Sikdar and his family members and said that they should be killed. Thereupon Prem Pal Singh, A-5 fired his gun which hit Sripal son of Gokaran who fell down. The accused persons armed with country-made pistols fired at Sikdar and other members of his family and caused injuries to Sikdar, his brother Ram Lal, PW 2 and Gokaran and his son Sheoraj. This occurrence was also witnessed by Rameshwar PW 4, Sheda, Mulaiam and Raghunath. When the witnesses remonstrated, the seven assailants ran away towards south. Sikdar, PW 1 arranged to take the injured to the police station but he was informed that the accused persons were lying in ambush on the way to Mirzapur, upon which Sikdar decided to proceed to Police Station Jalalabad instead of going to Mirzapur. Sripal however died due to the injuries on the way before reaching the police station. Sikdar, however, gave an FIR on March 9, 1974 at about 6.30 a.m. and the papers were transferred to Police Station Mirzapur as the case related to the jurisdiction of that police station. An inquest was held over the body of the deceased and the injured persons Sikdar PW 1 and Ram Lal,

PW 2 and others were examined by the Doctor, Civil Dispensary, Jalalabad. Dr Pratap Narain, PW 6, who conducted the postmortem, found as many as 14 gunshot injuries and one contusion. He opined that the death was due to coma and shock as a result of the gunshot injuries. PW 9 the Investigating Officer proceeded with the investigation and arrested the accused. After completion of the investigation the charge-sheet was laid. In the trial court the prosecution examined 10 witnesses. Out of these, PWs 1, 2 and 4 figured as eyewitnesses. PW 3 was examined in connection with the motive. The accused denied participation in the incident and alleged a false implication on account of enmity. They examined Ganga Charan, Priest, DW 1 who performed puja before the lighting of Holika.

3.The learned Sessions Judge, who tried the case, held that the accused had neither the remote motive nor immediate motive for commission of the crime. He held that the three eyewitnesses were highly interested and the version given by them is not worth reliance and since the occurrence took place during night time the witnesses might not have seen the assailants and that medical evidence also failed to corroborate the prosecution version and in that view of the matter, he acquitted the accused. In the appeal against acquittal, the High Court carefully examined every reason given by the Sessions Judge and ultimately held that all the reasons are highly unsound and the evidence has been rejected on insufficient grounds and accordingly it reversed the order of acquittal.

4.In this appeal, the learned counsel appearing for the appellants submitted that the reasons given by the learned Sessions Judge are sound and the view taken by him is reasonable and that the High Court ought not to have interfered in an appeal against acquittal. His further submission is that since the witnesses are all interested their evidence ought not to have been relied upon by the High Court when there are circumstances to indicate that they could not have witnessed the occurrence in the manner as spoken to by them. It is also his submission that the motive suggested by the prosecution is rather too remote. There is no immediate motive for the accused to commit the offence. Learned counsel relied on the reasons given by the Sessions Judge in support of his submissions.

5.So far as the motive aspect is concerned, it is true that the murder of the father of Sikdar was committed in the year 1933. That itself shows that there was hostility between the family of Sikdar, PW 1 and the family of the accused. However, the prosecution has also adduced evidence to show that there was immediate motive. Smt Premwati and Muthu were joint tenure holders but Sint Premwati sold away her share to Sikdar, PW 1 though an objection was raised by Muthu. Muthu created trouble by handing over the possession of his share to Kalyan Singh accused which led to initiation of proceedings under Section 145 CrPC and then attachment of the land was there. These facts are not in dispute. Then there was also a grievance that the crop was damaged and when Sikdar, PW 1 protested they were threatened by the accused saying that they would be killed. These are-all circumstances which speak about the immediate motive also. Therefore the reasoning of the learned Sessions Judge that there was no immediate motive is wholly incorrect. However when there is evidence of the direct witnesses, the motive aspect does not assume much importance. The learned Sessions Judge also very much commented about making offerings of Akshat in the Holika. He was under the impression that no Akshat would be made at 4 p.m. We do not think that there is any hard and fast rule in this regard. As a matter of fact, DW 1 admitted in his deposition that so

long as the fire is there Akshat can be made into it. However, this is a very minor circumstance.

6. The most important aspect of the case is the appreciation of the evidence of the eyewitnesses. No doubt, Sikdar, PW 1 and Ram Lal, PW 2 are interested witnesses but they are injured witnesses and their presence cannot be disputed. Merely because of interestedness their evidence can not be rejected outrightly. The learned Sessions Judge rejected the evidence of PWs 1 and 4 on the ground of involvement in some criminal and civil cases in the past but that can hardly be a ground to reject their evidence. PWs 1, 2 and 4 are important witnesses in the case. Sikdar, PW 1 injured witness has given a detailed account of the occurrence. PW 2 who is also injured has supported him. PW 4, a close neighbour had also witnessed the occurrence and he also supported the prosecution case. PW 1 deposed that Prem Pal Singh, A-5 fired from his gun which hit Sripal, deceased who fell down. He added that except Prem Pal Singh, who was towards the south, all the accused were towards the south-east. The shots fired by those accused hit him, Ram Lal, PW 2 and two others. On hearing the noise, Rameshwar, PW 4 and others came to the place of occurrence. Then the assailants ran away. In the cross-examination some minor contradictions were elicited. The learned Sessions Judge did not believe PW 1 because in his opinion the place of presence of Sripal, was not the same as was given out by this witness. The learned Sessions Judge making a too meticulous examination of the exact place where these witnesses were standing and finding some discrepancies rejected his evidence. Perhaps such a scrutiny would have been of some relevance provided these witnesses were not injured. The presence of injuries on them establishes their presence at the scene of occurrence. The learned Sessions Judge also pointed out that no blood was found by the Investigating Officer in the lane at point 'C' and therefore the version of the witnesses is inconsistent. Admittedly the lane between the two chabutras was a very narrow one as explained by that High Court so that it may be that while falling from the chabutra part of the body of Sripal, deceased went across the lane and rested on the other chabutra and thus blood fell there. This is not a case where there was no blood at all at the scene of occurrence. The learned Sessions Judge has taken a very narrow and literal view of the evidence overlooking the important circumstances and broad features. PW 2's evidence is also to the same effect. PW 4, though not injured, his presence at the scene of occurrence also can not be doubted. We have gone through the evidence of these witnesses and we do not find any material discrepancies or inconsistencies in their evidence. The learned Sessions Judge rejected their evidence on the same ground of reasoning which in our view is highly unsound. The learned Sessions Judge having accepted the date, time and factum of the occurrence, however, entertained a doubt that the occurrence must have taken place at night and therefore the witnesses would not have seen the assailants. There is no basis for such an inference. Even otherwise they are known to each other and no stranger is involved. The evidence of these witnesses is amply corroborated by the medical evidence.

7. Learned counsel, however, laid stress on the fact that the FIR was lodged after some delay and the medical examination of the injured witnesses also was delayed. It must be noted that PW 1 must have been busy in making arrangements in taking the injured including Sripal, still alive at that time, and PW 1 has also given an explanation that he had to go to Jalalabad Police Station. In any event merely such delay by itself is not a circumstance to reject the evidence of the eyewitnesses unless there are indications of false implication or circumstances which would manifest that they could not have witnessed the occurrence. Therefore the reasons given by the learned Sessions Judge

for rejecting the evidence of these injured eyewitnesses outrightly are wholly unsound. The High Court has examined every detail and has also considered every reason given by the learned Sessions Judge and has rightly held that the evidence of these witness can not be rejected outrightly in that manner.

8.However, in a case of this nature where the witnesses are interested, by way of rule of caution we think it would be safe to convict only such of those accused to whom specific overt acts have been attributed. As spoken to by all these witnesses, the definite case that emerges is that on the day of occurrence some minor altercation took place at about 4 p.m. when the Holi festival offerings were going to be made. According to these witnesses Kalyan Singh (since dead) and Deep Singh, A-4 armed with lathis, Prem Pal Singh, A-5 armed with a gun and rest armed with country-made pistols came there. The only overt act attributed to Kalyan Singh and Deep Singh, A-4 is that they pointed towards Sikdar, PW 1 and said that his family members should not be left out. Thereafter Prem Pal Singh, A-5 fired at Sripal, deceased and the remaining accused fired with their country- made pistols towards members of the family of Sikdar. It can thus be seen that Deep Singh, A-4 has not played any active role in the occurrence. No doubt any form of instigation also would make him liable constructively. Since we are dealing with interested witnesses, it would be safe to convict only such of those accused who participated in the occurrence and caused injuries. When the witnesses are highly interested and when the circumstances also go to show that several people gathered at the place of occurrence watching the Holi festival, perhaps it becomes all the more necessary to scrutinise the evidence of these interested witnesses with great care and caution. With a view to avoid any danger of convicting a person who could have been simply present or at any rate who had not played any active role which in those special circumstances may throw a doubt about his being a member of the unlawful assembly, we think the safe test is to see whether overt acts were attributed. In this view of the matter we think it is a fit case where Deep Singh, A-4 should be given benefit of doubt but by this we are not in any manner doubting the veracity of the three eyewitnesses. Accordingly the convictions and sentences awarded against Deep Singh, A-4 are set aside and he is acquitted of all the charges. If he is on bail, his bail bonds shall be cancelled. The -convictions and sentences awarded against the remaining accused are confirmed.

9.In the result the appeal is allowed so far as Deep Singh, A-4 is concerned and dismissed so far as remaining accused are concerned.