Supreme Court of India
Bharat Singh vs State Of Uttar Pradesh on 17 December, 1998
Author: Pattanaik.J.
Bench: G.B.Pattabaik, M.B.Shah

PETITIONER:
BHARAT SINGH

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT: 17/12/1998

BENCH:
G.B.Pattabaik, M.B.Shah

JUDGMENT:

PATTANAIK.J.

These two appeals are directed against the Judgment and Order 30th January, 1997 of Allahabad High Court arising out Sessions Trial No. 213 of 1978 before the Sessions Judge, Manipuri. Five appellants were tried for offenccs under Section 302/149 and Section 148 IPC on the allegation that all of them came armed and surrounded the deccased Jai Dayal Singh, while he was busy with cultivation work on 15.10.77 at 1.00 P.M. and opened fire at him. On account of such firing the deccased died. The further prosecution case is that on account of previous rivalry between the parties the decased had been given police guards and those police guards arrived at the scene of occurrence and even chased the assailants and fired at them but all the assailants escaped. While the deceased was on the field, PWI Jai Prakash and PW2 Satyapal Singh were also there but they ran for their lives to a certain distance and came to the place of occurrence only after the assailants left the place. Jai Prakash PW1 gave a written report at the Police Station at 3.05 P.M. which was treated as FIR and the police then started investigation. After completion of investigation charge-sheet was submitted and on being committed the appellants stood their trail. The learned Sessions Judge relying upon the evidence of the two eye witnesses PW1 and PW2, came to the conclusion that the appellants formed an unlawful assembly and started indiscriminately firing at the deceased, as a result of which, the deceased died. Consequently, the Sessions Judge convicted the appellants for the offences as already stated. On appeal, the High Court also re-appreciated the evidence of the two eye witnesses and agreed with the conclusion of the learned Sessions Judge that the witnesses are trust-worthy and reliable and, therefore, the conviction of the appellants on the basis of those two witnesses was upheld. Since the conviction of the appellants is based upon the evidence of the aforesaid two eye witnesses, Mr. U.R.Lalit, the learned Senior Counsel, appearing for the appellant's contended that the said two eye witnesses admittedly being enemical towares the accused persons, they cannot be hold to be fully reliable witnesses and therefore corroboration from the independent

sources, thouth was available the same not having been made available in Court, the prosecution case must be held to have been vitiated. According to Mr. Lalit, the police guards having reached the seene of occurrence while the accused persons were there and the prosecution evidence being that the police guards chased the accused persons and there was an exchange of fire, non-examination of those police guards must be construed to be an infirmity which impeaches the reliability of the two enemical eye witnesses PW1 and 2. Mr. Lalit also contended that the occurrence having taken place at 1.00 P.M. in broad day light in an open field and very near the Village Basti, normally one would expect several villagers as witnesses and non-availability of such witnesses must be viewed with suspiction. Mr.Lalit also further argued that the investigation in the case has not been made in a fair manner and the true story has not been placed before the Court, as a result of which the conclusion becomes irresistible that the genesis of the case and the manner in which the deceased met his death is not coming forth before the Corut and therefore the accused is entitled to benifit of doubt. According to Mr.Lalit, the fact that only three cartridges were found, two of which from 12 bore gun and one from riffle, the prosccution case that all the appellants started indiscriminately firi ng at the deceased cannot be accepted. Learned counsel also pointed out some intrinsic inconsistency between the evidence of the witnesses of PWs1 & 2 and contended that the evidence of such witnesses cannot from the basis of conviction in a charge of murder, particularly when they had poistive animosity against the accused persons.

In view of the contentions raised by the learned counsel, we have carefully scrutinised the evidence of the two eye witnesses PW1 & 2. On going through the same, we do not find any intrinsie inconsistency or contradiction between them, so far as the basic prosccution case is concerned. It is apparent that all three of them namely the deceases and PWs 1 & 2 went to the field together and were doing agricultural operation when these accused persons came in a group being armed and started firing. The two witnesses left ht efield to save their lives but could scc the occurrence from the nearby field keeping themselves hidden but the deceased could not urn away and was made a vietim of the brutal action of the appellants. That the deceased had died of gun-shot injury is castablished through the evidence of doctor who had conducted the post-mortem examination on the dead body of the deceased. The so-called minor inconsistency int he evidence of the two witnesses pointed out to us by Mr. Lalit, in out view, do not detract the intrinsic worth of the evidence of the two witnesses so as to dub them as unrcliable. On the other hand, a reading of the evidence of these two witnesses makes it crystal clear that they were on the field along with the deceased and they did scc the occurrence as narrated by them. It is tru that the poilce guards who had been costed to provide sccurity for the deceased on account of previous rivalry between the parties chased the accused persons as told by PWs 1 & @ and if any of them would have been examined they would have unfolded the fact of their chasing the accused persons and escape of the accused persons. But by the time they reached the scene of occurrence, the accused had already shot at the deceased and have tried to escape from the place. On going through the materials on record, it is difficult for us to come to the conclusion that the police people have seenthe fact of the accused appellants, shooting at the deceased and therefore, non-examination of such police guards who cannot be termed as eye witness to the occurrence with not be fatal to the prosecution. Mr. Lalit, in course of his arguments had also pointed out from the evidence of the doctor that the fact that there has been no scorching, blackeming and tattoing injury on the body of the deccased is because of te the fact that shooting has not been from a close range and therefore, the coiceincc of eye witnesses

cannot be hold to But in the absence of any positive opinion from the doctor and in the absence of the exacl distance from which the accused persons started shooting at the deceased, it is not possible to accept this contention of the learned counsel for the appellants. The evidence of eye witnesses have been scrutinised by the learned Sessins Judge as well as by the High Court in appeal and both the courts have relied upon the same. Ordinarily, therefore, this court would not have re-appreciated the evidence unless any glaring defect is pointed out. But in view of the arguments advanced by the learned counsel for the appellants, we have also thoroughly scrutinised the evidence of the two witnesses for finding out whether there is any justification for not relying upon the testimony of those two witnesses. But we do not and anything in their evidence so as to discard then from consideration. In our considered opinion the courts below rightly relied upon the evidence of the aforesaid two witnesses in basing the conviction of the appellants. We agree with the conclusion arrived at and hold that the prosccution case has been proved beyond reasonable doubt. We therefore do not find any merit in these appeals, which are accordingly dismissed.