

specially when they were known to the first informant's side then the case of the prosecution becomes weak and unbelievable. Also, we are of the view that the eye-witnesses from the side of the prosecution were, in fact, coming up with a cooked up story and that they were in fact not there on the spot at all. Had they been there then they would have at least known that before Ramagya was killed his hands were tied behind him. We are also of the view that even if the eye-witnesses were there they had definitely not recognized the dacoits and only to implicate certain known inimical persons, the first information report was got lodged. We are further of the view that the first information report was also ante-timed. In the first information report, there was no mention of the fact that the hands of the Ramagya were tied before he was killed. Also, the P.W.-2 had very categorically stated that under the statement recorded under Section 161 Cr.P.C., he had not mentioned the names of any of the accused but we find from the first information report that the names were mentioned in the first information report and if the P.W.-2 who was so close to the P.W. -1 had known of the names mentioned in the first information report then he would have definitely mentioned the names of the accused persons in the statement made under Section 161 Cr.P.C. Also, we are concluding that the first information report was ante-timed as the documents which were sent for the post mortem along with the panchayatnama did not contain the chik FIR, meaning thereby that the first information report was ante-dated after sometime had passed and the informant's side had made up its mind to implicate all the accused whom they wanted to implicate. We are of the view that the statements of the P.W. -1, P.W.-2, P.W. - 3 and P.W. 4 as had been stated by them before the Court were unrealistic. They had stated that they had called the names of the accused persons from the roof tops. In the case they were aware of the fact that their enemies had

come their would have instead of calling out the names of known enemies who were carrying guns and firearms, would have tried to hide themselves and would not have made them vulnerable to the firearms which they were carrying.

29. In the instant case, we definitely find that all the accused persons were neighbors who were inimical to the prosecution side and, therefore, they were implicated in the case in hand. We, thus conclude that, in fact, the case of the prosecution does not inspire confidence and, in fact, the prosecution had come up with a cooked up story only to implicate known persons who were inimical to him.

30. For all the reasons mentioned above, we are of the view that the judgement and order dated 11.3.1983 passed by Ivth Additional Sessions Judge, Varanasi, in S.T. No. 111 of 1978 (State vs. Jagdish Singh and others) & in S.T. No. 357 of 1979 (State vs. Ramdhani Tiwari @ Dhani and others) cannot be sustained in the eyes of law and, therefore, the same is set aside. Both the appeals are, accordingly, allowed. The appellants are already on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.

(2025) 1 ILRA 120
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 25.11.2024

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Criminal Appeal No. 659 of 1984

Iqbal Singh & Ors.	...Appellants
State of U.P.	...Respondent
Versus	

Counsel for the Appellants:

Pt. Mohan Chandra, Om Prakash Rai

Counsel for the Respondent:

D.G.A.

Criminal Law - Criminal Procedure Code, 1973 – Section - 313 - Indian Penal Code, 186 - Sections – 147, 148, 149, 302 & 307-

Appeal – against conviction & sentence – FIR – offence of murder - investigation – PMR – site plant – charge-sheet – plea taken that they were falsely implicated due to enmity – conviction & sentence - court finds that - (i) during pendency of appeal out of 8 accused persons 6 were died therefore against them appeal had abated, (ii) pw-1 who was an injured witness was not there on spot, (iii) there was an enmity between the injured and accused persons, (iv) pw-1 had not informed the first informant about incident himself, (v) pw-1 was such a witness who could not be absolutely relied upon for the purpose of convicting the accused, (vi) surviving both appellants were carrying lathies were not armed in such a manner as would make it evident that they had gone with a premeditated mind to do away with the deceased - court inclined to hold that, Conviction of the accused persons could not be based on the testimony of an eye-witness who was not believable — hence, appeal succeeds and is allowed - conviction and sentence is set aside – direction issued, accordingly. (Para – 11, 13, 14, 15)

Criminal Appeal Allowed. (E-11)**List of Cases cited:**

1. Maniram & ors. Vs St. of UP (1994 Supp (2) SCC 289),
2. Solanki Chimanbhai Ukabhai Vs St. of Guj.(AIR 1983 SC 484),
3. Krishneogwda & ors. Vs St. of Karn. (AIR 2017 SC 1657).

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Syed Qamar Hasan Rizvi, J.)

1. The present criminal appeal has been preferred against the judgement and order dated 1.3.1984 passed by the Special Judge, Ghaziabad, in Sessions Trial No. 23 of 1982.

2. Upon an incident having taken place on 2nd December, 1981 at around 10:00 A.M., a first information report was lodged on that very date at 1:30 P.M. The first information report had stated that around 6 to 7 years prior in point of time, one Tejpal Singh, father of one of the accused Iqbal Singh was murdered wherein Jagvir Singh and the first informant were made the accused. It has further been stated in the first information report that also around 3 to 4 years prior to the date when the incident had occurred one Vikram Singh was also murdered by Amar Singh etc. It has further been stated in the first information report that these accused persons were out on bail and because of the fact that the injured and the deceased had given statements against accused persons when they were being tried for the murder of Tejpal and Vikram Singh, the accused persons were inimical to them and, therefore, when on the date of incident Ram Saran, the brother of the first informant and nephew of the first informant Jagvir Singh were found by the accused persons, in a lonely place while they were coming back from Shahibad to their village, they were attacked by the accused persons with an intention to kill Ram Saran and Jagvir Singh. It has further been stated in the first information report that Amar Singh, Iqbal Singh were carrying Tabals whereas Omkar Singh, Rukam Singh were having spades/ Favada in their hands. Madan, Sansar and Prakash Singh sons of Khajan, Ishwar son of Harikesh, Krishnapal son of Karan Singh were having Lathies in their hands. They all had met at

the tubewell of Iqbal and on the exhortation of Amar Singh they had chased the two i.e. the deceased and the injured. In the first information report it has been stated that Amar Singh had exhorted the others to do away with the deceased and the injured. It has been stated that the deceased and injured upon realizing that they were being assaulted they had tried to save their lives and had run to the agricultural fields on the northern side. It has further been stated that thereafter Amar Singh had hit Jagvir Singh on the head, whereas the others had started attacking Ram Saran by the spade and tabal in their hands. Still further they had stated that when they had raised a hue and cry then the witnesses Nawab Singh, Pitam Singh, Bijendra Singh, Ganeshi, Kamalvir and Harphool Singh etc. reached on the spot to save the deceased and the injured. It has still further been stated that because of the injury caused by the Spade and Tabal, Ram Saran had died on the spot whereas Jagvir Singh was seriously injured. It has, thereafter, been stated that Nawab Singh had run to the agricultural field of Shiv Charan who had after arranging for a Bagghi which was to be pulled by buffalos, reached the spot and took the injured to the police station and thereafter upon his dictation Ompal Singh had scribed the first information report.

3. Upon the registration of the first information report, investigation ensued. The police had taken into custody the belongings of the deceased Ram Saran and had prepared a memo of it which was exhibited as Exhibit - Ka11. The blood stained bedsheet and cap of the deceased were also kept in the custody of the police and a recovery memo was prepared which was exhibited as Exhibit Ka9. Blood stained soil and normal soil were also taken from the spot when the incident had

occurred and memo of it was prepared and exhibited as Exhibit-ka10. The injured was examined by Dr. S.K. Das and the injury report was exhibited as Exhibit Ka1.

4. Upon the death having taken place of Ram Saran, Dr. K.K. Karoli conducted the post mortem and the report of it was exhibited as Exhibit Ka2. Prior to the conducting of the post mortem and the preparation of the post mortem report, a panchayatnama was also prepared which was exhibited as Exhibit Ka4.

5. Upon investigation having concluded, the police had submitted its report which when was taken cognizance of by the learned Ist Additional Sessions Judge, Ghaziabad, the eight accused, namely, Iqbal Singh, Onkar Singh, Rakam Singh, Madan Singh, Sansar Singh, Prakash Singh, Ishwar Singh and Krishna Pal were charged under Sections 148 read with Section 147 IPC and also under Section 302 read with Section 149 IPC. Since Jagvir Singh was injured, a charge was also framed against the 8 accused persons under Section 307 read with Section 149 IPC. The trial, thereafter, commenced and the eight prosecution witnesses were examined and cross examined. The accused had got their statements recorded under Section 313 Cr.P.C. Thereafter, when the Special Judge, Ghaziabad, held the eight accused persons guilty of the charges levelled against them the instant Criminal Appeal was filed.

6. During the pendency of the appeal, out of 8 accused persons, 6 of them had died and the criminal appeal, therefore, vis-a-vis the appellant no.1 Iqbal Singh, the appellant no. 2 Onkar Singh@Rirku, the appellant no. 3 Rakam Singh, the appellant no. 4 Madan Singh, the appellant no. 6

Prakash and the appellant no.7 Ishwar had abated.

7. The appellant no. 5 Sansar Singh and the appellant no. 8 Krishan Pal were not represented by any lawyer and, therefore, the Court had appointed Sri Saurav Sachan as an Amicus Curiae on their behalf.

8. Learned amicus curiae has essentially argued that if the statements of P.W. 1, P.W. 4, P.W. 5, P.W. 6 and P.W. 7 are perused then it appears that they have very consistently stated that when the deceased and the injured had reached the tubewell of Iqbal then they were chased by the 9 accused persons and they, to save their lives, entered the agricultural fields lying on the northern side where they were attacked by Tabal, spades and lathies and, thereafter, the deceased Ram Saran, because of the injuries, had died. However, Jagvir had survived.

9. Learned amicus curiae has, to substantiate his arguments submitted that in fact, the P.W.-1 who was an injured witness was not there on the spot and had only falsely implicated the appellants.

10. Following were the submissions made:-

I. Learned amicus curiae has submitted that if the post mortem report of the deceased Ram Saran is seen then it would be apparent that the medical evidence was absolutely diametrically opposite to the oral evidence which was recorded during the trial of the case. Learned amicus curiae states that throughout in the first information report and thereafter in the statement of P.W.-1, the injured witness and in the statements of P.W.-4, P.W.-5, P.W.-6 and P.W.-7 who were the

eye witnesses, the case brought forth was that the deceased Ram Saran was assailed by a Tabal. He, however, states that the post mortem report, said that there was an injury on the neck of the deceased which was reported in the post mortem as "Kuchla Hua Zakhma". He stated that "Kuchla Hua Zakhma" would mean a crushed injury. This would not be possible if the deceased was assailed by a sharp edged weapons. He states that even if the sharp side of the spade/tabal was not used and in fact the plain side was used even then a crushed injury was not possible. He, therefore, states that the medical evidence which stated that injury was of a crushed type did not match with the testimony of the eye-witness who was an injured witness, who had stated that, in fact, the deceased was assailed by a spade/tabal (sharped edged weapon).

II. Learned amicus curiae states that the injured witness was definitely not injured to the extent that he could not have spoken out. He had drawn the attention of the Court to page 20 of the paper book wherein it had clearly stated that Nawab had narrated the entire incident to Shiv Charan. How Nawab came to know about what had happened prior in point of time when he had reached the place of incident was not clear. According to the P.W.-1 the injured witness it was not possible for Nawab to have the details of the incident as he had reached the place of incident only after a hue and cry was raised by the injured witness. He, therefore, states that in fact the P.W.-1 was not there on the spot at the time of the incident. It was a possibility that the deceased had died in an accident and the injured had sustained the injuries elsewhere and simply because there was an enmity between the injured and the accused persons, en mass, they had been implicated in the case.

III. Learned amicus curiae for the appellants further states that the testimony

of P.W.-1 further becomes unbelievable because if the testimony is read along with the site plan it becomes evident that the P.W.-1 was stating all types of falsehood. He had stated that there was some Nahar passing by but in the site plan there was no Nahar. He further states that the eye witnesses who had assembled on the spot were staying in the vicinity but pointing out to the site plan learned counsel had argued that all the land surrounding the place of incident belonged to one Virendra and Virendra was nowhere in the picture. He submits that even though he was named in the first information report as an eye witness, he had not been produced in the Court.

IV. Learned amicus curiae for the appellants further states that if the injuries of P.W.-1 and the statement of Dr. S.K. Das, P.W.-2, are perused it would become apparent that the injuries were such that the P.W.-1 could not have narrated the incident to the first informant Shiv Charan Singh.

V. Still further, learned amicus curiae for the appellants has argued that from the testimony of P.W.-1 it was apparent that Shiv Charan Singh was an owner of a tractor but the injured was carried to the Police Station and thereafter to the Hospital by a cart which was pulled by a buffalo.

VI. The surviving appellants i.e. Sansar Singh and Krishnapal Singh were allegedly wielding lathies only. It has nowhere been alleged in the first information report or in the various testimonies of the injured witnesses and the eye-witnesses that all the accused persons had in a premeditated manner decided/resolved to do away with the deceased. From the perusal of their testimony, learned counsel submitted that it becomes only evident that at the spur of the moment Amar Singh had exhorted the others to do away with the deceased. He submits

that if the accused Iqbal Singh and Amar Singh could carry Tabal then in a village it was not difficult for the other accused persons to have also carried Tabal. If they had any intention to actually kill the deceased then they would not have gone to the place of incident with only lathies in their hands. He, therefore, submits that the appellants no. 5 and 8 who were carrying lathies had no role whatsoever in the incident which had occurred. He submits that there were also no lathi injuries on the body of the deceased.

11. Learned amicus curiae, therefore, states that the eye witness account was absolutely unbelievable and the case, therefore, becomes a doubtful one and therefore the conviction of the accused persons could not be based on the testimony of an eye witness who was not believable. He relied upon judgements of the Supreme Court passed in **Maniram and Others vs. State of U.P. reported in 1994 Supp(2) SCC 289, Solanki Chimanbhai Ukabhai vs. State of Gujarat reported in AIR 1983 SC 484 and Krishneogwda and others vs. State of Karnataka reported in AIR 2017 SC 1657.**

12. Learned AGA Sri Chandra Bhushan Dhar Dubey, however, has vehemently argued that the eye-witness account of an injured witness could not be lightly done away with. He has also stated that the eye witness account of P.W. 4, P.W. -5, P.W. - 6 and P.W.-7 had corroborated the eye witness account of P.W.-1 who was an injured eye-witness and, therefore, the testimony of P.W.-1, P.W.-4, P.W.-5, P.W.-6 and P.W. 7 could not be lightly ignored.

13. Having heard learned Amicus Curiae Sri Saurabh Sachan and Sri Chandra Bhushan Dhar Dubey, learned Additional Government Advocate, we are of the view

that the testimony of injured witness P.W.-1, becomes fairly doubtful on account of the fact that he had not been able to give a correct description of the place where the incident had occurred. If the testimony of P.W.-1 is seen, he had definitely not been able to connect the place of incident with the map as had been given in the site plan which was exhibited as Exhibit - ka8 in the paper book. We are also of the view that the P.W.-1 who was an injured witness had not informed the first informant Shiv Charan Singh about the incident himself. We find after having perused the injury report and the statement of P.w.-2, Dr. S.K. Das that the injuries were so grievous that he could not have spoken aloud and narrate the incident to the first informant Shiv Charan Singh. In the instant case, we find that, in fact, another alleged eye witness Nawab Singh had stated that he had narrated the entire incident to Shiv Charan Singh and on the dictation of Shiv Charan Singh, Om Pal Singh had scribed the first information report and we are, thus, of the view that the P.W.-1 was such a witness who could not be absolutely relied upon for the purpose of convicting the accused persons. We further find that the appellants no. 5 and 8 who were carrying lathies were not armed in such a manner as would make it evident that they had gone with a premeditated mind to do away with the deceased.

14. Thus for all the reasons which we have stated, the criminal appeal is **allowed**. The impugned judgement and order dated 1.3.1984 passed by the Special Judge, Ghaziabad, is set aside. Since the appeal against the appellants no. 1 Iqbal Singh, the appellant no. 2 Onkar Singh @ Rirku, the appellant no. 3 Rakam Singh, the appellant no. 4 Madan Singh, the appellant no. 6 Prakash and the appellant

no. 7 Ishwar has already abated, we confine our judgment and order to the appellant no. 5 Sansar Singh and the appellant no. 8 Krishan Pal, who are being acquitted of all the charges under which they were tried.

15. The appellant no. 5 Sansar Singh and the appellant no. 8 Krishan Pal are acquitted of the charges levelled against them. The appellants are already on bail and they need not surrender. The sureties and bail bonds are discharged.

16. For the hard work which has been put in by the learned Amicus Curiae Mr. Saurabh Sachan, we quantify his fee as Rs. 25,000/- which shall be payable to him by the Legal Services Authority forthwith. The payment be got done under the supervision of the Registrar General of this court.

(2025) 1 ILRA 125
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.01.2025

BEFORE

THE HON'BLE SIDDHARTH VARMA
THE HON'BLE RAM MANOHAR NARAYAN
MISHRA, J.

Criminal Appeal No. 2696 of 1981
 And
 Criminal Appeal No. 660 of 1984

Devendra Kumar @ Jhunna & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Counsel for the Appellants:

S.S. Tewari, Ajay Kumar Pandey, K.K. Srivastava, Roshan Khan, Satish Trivedi

Counsel for the Respondent:

Dga, Mayank Bhushan