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2025:AHC:222690-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

GOVERNMENT APPEAL No. - 2576 of 1985

State of U.P.

…..Appellant(s)

Versus

S. Vijai Singh

…..Respondent(s)

Counsel for Appellant(s)	:	A.G.A.
Counsel for Respondent(s)	:	Aditya Upadhyay, Ambrish Pandey, M.p. Yadav, Ram Bilas Yadav, S.k. Yadav

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

1. This Government Appeal No. 2576 of 1985 under Section 378 Cr.P.C. has been filed by the State against the judgment and order dated 22.05.1985 passed by learned IVth Additional District and Sessions Judge, Gorakhpur in Session Trial No. 64 of 1984, whereby the accused-respondents, namely, Shanti Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Rama Singh, Hazari Bania, Ram Samujh, Ramapati Singh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav have been acquitted of the charge under Sections 147, 302 read with Section 149 IPC. The accused-respondents Ram Briksh Singh, Sesh Vijay Singh and Rajeshwari Lal have been acquitted of the charge under Sections 148 and 302 IPC.

2. As per prosecution version, facts of the case are that on 12.08.1982, which was Sri Krishna Janmastmi day, deceased Girijashankar Lal was going to Lakshmipur market on a cycle

alongwith his younger daughter Km. Pushpa, who was seated in his front on the frame of the cycle. Complainant Nalin Kumar was following him and was at a distance of 10-15 paces. At about 10.30 A.M., when Sri Girijashankar Lal reached on the Kacha road near the grove of Sri Yunus Khan, accused Ram Briksh Singh and Shesh Vijai Singh armed with country-made pistol, accused Rajeshwari Lal armed with knife and rest of the accused carrying lathies emerged from the said grove and surrounded Sri Girijashankar Lal. He stopped the cycle and Km. Pushpa immediately got down from the cycle with a push. Thereafter, Ram Briksh Singh and Shesh Vijai Singh fired with their country-made pistols, consequently he sustained injuries and tumbled down. Thereafter, accused persons lifted and took him near the ditch lying to the east of the road and threw him down there. Whereafter, accused Rajeshwari Lal sawed his neck with his knife. Rest of the accused had been holding Sri Girijashankar Lal and when Sri Girijashankar Lal died, the accused persons threw his dead body in the water in the nearby ditch. When accused Rajeshwari Lal was cutting the neck of Sri Girijashankar Lal, Km. Pushpa was entreating the accused and begging for the life of her father, but accused Shanti Vijai Singh threatened and pushed her back. Pancham and Ayodhya, who were coming from the road, saw this occurrence, when the accused noticed their presence on the spot, they threatened and chased them and they fled away raising hue and cry. The accused then ran away. Nalin Kumar, Pancham and Ayodhya then came back to the spot and in the meantime some other villagers also reached there. Complainant Nalin Kumar asked them to supervise the dead body. He started for the police station on his cycle. After covering a distance of 5-6 Km., when he reached in village Mohnapur Dhala, he purchased some papers and prepared a report giving details of this occurrence, took it to Police Station Purandarpur and lodged the same there at 12.15 P.M.

3. Thereafter, on the information of complainant Nalin Kumar, a case was registered against the named accused persons under Sections 147, 148, 149, 302 IPC. Investigation of the case was handed over to S.I. Ravindranath Pandey (PW-5). He started investigation of the case, inspected the place of incident, prepared the *panchayatnama* (inquest report) of the deceased Girijashankar Lal, sent his body for autopsy and also prepared the site plan. After completing all the formalities of the investigation, he submitted charge-sheet against the accused persons in the court of concerned Magistrate. Thereafter, the case was committed to the court of Sessions for trial. The accused Shanti Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Rama Singh, Hazari Bania, Ram Samujh, Ramapati Singh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav were charged under Sections 147, 302 read with Section 149 IPC and accused Ram Briksh Singh, Shesh Vijay Singh and Rajeshwari Lal under Sections 148, 302 IPC. The accused pleaded not guilty to the charges and claimed trial.

4. In the trial Court, the prosecution produced Pancham (PW-1), informant Nalin Kumar (PW-2), Pushpa (daughter of Girijashankar Lal) (PW-3), Constable Gauri Shankar Singh (PW-4), S.I. Ravindra Nath Pandey (PW-5) and Dr. G.N. Tiwari (PW-6). The prosecution also adduced documentary evidence.

5. Thereafter, the statements of all accused/respondents were recorded under Section 313 Cr.P.C. All accused pleaded their innocence and they stated that they were falsely implicated in this case due to village enmity and rivalry because of the elections of Gram Pradhan of village Ghurchiha. The defence adduced Murlidhar Mishra as DW-1 in their support and also filed documentary evidence.

6. The trial Court, after appreciating and evaluating the prosecution evidence, as available on record, found that

prosecution witnesses Pancham (PW-1), informant Nalin Kumar (PW-2) and Pushpa (PW-3) were not eye-witnesses to the incident. Since the prosecution was unable to prove its case beyond reasonable doubt, the trial Court acquitted all accused persons, namely, Shanti Vijay Singh, Shesh Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Rajeshwari Lal, Ram Singh, Hazari Bania, Ram Samujh, Ramapati Singh, Rambriksh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav.

7. In light of the office report dated 24.07.2025, which is based on the letter dated 19.03.2024 of the Chief Judicial Magistrate, Gorakhpur, the appeal is declared to have abated so far as it concerns accused/respondent nos. 1, 5, 7, 8, 10, 11, 12 and 13, namely, Shanti Vijay Singh, Rajeshwari Lal, Hazari Bania, Ram Samujh, Rambriksh, Shreeram Yadav, Murlidhar Shukla and Paras Yadav. The appeal survives for adjudication only so far as it concerns accused/respondent nos. 2, 3, 4, 6 and 9, namely, Shesh Vijay Singh, Shatru Vijay Singh, Chandra Vijay Singh, Ram Singh and Rampati Singh.

8. Learned A.G.A. for the State submitted that the date, time and place of the murder were fully established and the trial Court was not justified in recording a finding contrary to the evidence on record. Pancham (PW-1) is an independent witness, while Nalin Kumar (PW-2) and Pushpa (PW-3) are members of the deceased’s family, therefore, all witnesses are quite natural in this case. It is also submitted that, despite their tender age, Nalin Kumar (PW-2) and Pushpa (PW-3) withstood the test of cross-examination. The minor inconsistencies pointed out by the learned trial Court were not sufficient to discard their testimony. In view of the above arguments, it is again submitted that, taking any view of the matter and considering the total facts and circumstances of the case and the material available on record, the order of acquittal is not justified in the eyes of law. Hence, the Government Appeal deserves to be allowed and the judgment and

order of acquittal dated 22.05.1985 passed by the trial Court is liable to be set aside.

9. Per contra, learned counsel for the accused-respondents submitted that the judgment and order of acquittal dated 22.05.1985 passed by the learned trial Court is fully justified and based on appreciation of evidence and law. It is also submitted that it was a blind murder of the deceased Girijashankar Lal. The prosecution has adduced Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) as eye-witnesses of the incident, but these so-called eye-witnesses could not withstand the cross-examination. The trial Court found that Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) are only planted and projected eye-witnesses. All the three witnesses of the so-called incident are not the eye-witnesses of the incident. The trial Court, in proper and legal manner, appreciated and evaluated the evidence adduced by the prosecution and found that Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) were not eye-witnesses of the incident. The order of acquittal passed by the trial Court is fully supported by evidence and reason. No mistake about appreciation of evidence and application of law has been committed by the trial Court. Thus, learned counsel for the accused-respondents has submitted that the instant Government Appeal filed by the State has no merit and is liable to be rejected.

10. In view of the above arguments of learned A.G.A. for the State and learned counsel for the accused-respondents, we have gone through all the evidence available on record. Apart from this, we have also gone through the judgment and order of acquittal dated 22.05.1985 passed by the trial Court.

11. From perusal of the evidence available on record, it is evident that, as per the prosecution story, the incident occurred on 12.08.1982 and it is said that Pancham (PW-1), Nalin Kumar

(PW-2) and Pushpa (PW-3) (daughter of the deceased Girijashankar Lal) witnessed the incident with their own eyes.

12. From perusal of the evidence given by prosecution witness Pancham (PW-1), we find that, in his examination-in-chief, this witness supported the prosecution story as narrated in the first information report, which was lodged by Nalin Kumar (PW-2), but when we examined his cross-examination, we find that he could not stand in his cross-examination. At the same point of fact, this witness has stated a different version in his evidence.

13. It is also evident that this witness has given evidence contrary to his statement recorded by the Investigating Officer under Section 161 Cr.P.C. In other words, Pancham (PW-1) has given a totally different and improved version in the Court than the statement recorded under Section 161 Cr.P.C. It is also evident from the statement of this witness that when confronted with his earlier statement, the witness has stated that *"if darogaji has not written this fact in my statement, I cannot give any reason for it."* Due to the inconsistencies, embellishments, material and major improvements, the trial Court did not find this witness reliable. We have also perused the evidence of this witness and find that evidence of this witness does not inspire confidence and is, therefore, considered untrustworthy. The trial Court also found that this witness is not reliable because of the material contradictions and improvements in his statements.

14. Nalin Kumar (PW-2) is the informant of this case. As per the prosecution story, this witness was also going with the deceased Girijashankar Lal on the date of the incident, i.e., 12.08.1982. In his examination-in-chief, this witness stated that he was going behind his maternal uncle (*mausa*), the deceased Girijashankar Lal, on another bicycle. We find that in his examination-in-chief, this witness has given his evidence as per the version of the F.I.R., which was written by him. In other words, what was stated

by this witness in the F.I.R., all those facts and statements were reiterated and stated in his examination-in-chief by this witness.

15. PW-2 Nalin Kumar has got the F.I.R. of this case registered at police station Purandarpur and thereafter, the investigation of the case was started by the police. It is stated in his evidence by the informant Nalin Kumar (PW-2) that he was residing with his maternal uncle (*mausa*), the deceased Girijashankar Lal, in village Ghurchiya for his education. It was also stated that his uncle was a librarian at Sardar Patel Inter College, Lakshmipur, and he himself was a student there. When we have gone through his cross-examination, we find that this witness stated this statement, which was not given by him in his statement under Section 161 Cr.P.C. From this, it is amply clear that this witness stated in his evidence that this statement was not given by him to the Investigating Officer. Meaning thereby, this witness totally improved his evidence in the Court from his statement under Section 161 Cr.P.C. given to the police. The major and material contradictions in his evidence were found by the trial Court. We also find that in the evidence of this witness, major and material contradictions and improvements have been made by this witness at the time of recording his evidence in the trial Court. The contradictions and improvements that are committed by this witness are so material and grievous that in such a situation, as per the law of evidence, the statement of this witness as given in the trial Court could not be believed to be true and reliable. From perusal of the evidence of this witness, we find that evidence of this witness does not inspire any confidence. Due to this reason, the trial Court not relied and believed the evidence of this witness. The trial Court found that this witness was also not present at the place of occurrence on 12.08.1982. The trial Court has also given this finding that "if he actually lives in the village and received education in the said intermediate college, the prosecution could file his admission form, mark-sheet, transfer certificate, scholar

register showing the name of his local guardian, which would have proved that he was living in the village. His non-appearing in the supplementary examination and passing of the Intermediate examination in 1983 as a private candidate go to show that he never lived with the deceased and was never a student of that college." Thus, from the appreciation of the evidence of informant Nalin Kumar (PW-2), the trial Court found that this witness was not living with the deceased Girijashankar Lal at village Ghurchiya at the time of the incident. The trial Court also found that this witness was not an eye-witness of the incident. The prosecution, after due deliberation, produced this witness as both informant and eye-witness. Reasoning given by the trial Court is fully supported by the evidence in this respect that this witness is not an eye-witness. Learned trial Court also found that the so-called conduct of this witness is very much suspicious and unnatural to human behaviour. Thus, we are also of the considered opinion that Nalin Kumar (PW-2) is not an eye-witness of the incident and he was not present at the scene of occurrence when the incident occurred on 12.08.1982 as alleged by the prosecution.

16. Pushpa, who is daughter of the deceased Girijashankar Lal, is PW-3 in this case. It is stated by the prosecution that on the date of incident, the deceased Girijashankar Lal was going to Laxmipur market for purchasing Pooja samagri for Sri Krishna Janmashtami festival. PW-3 Pushpa was also accompanying her father Girijashankar Lal. It is stated that Pushpa (PW-3) was sitting in front of the bicycle of his father deceased Girijashankar Lal. As per the prosecution story and the statement of this witness, incident took place in her presence. This witness in her examination-in-chief fully supported the first information report and also corroborated the evidence of Pancham (PW-1) and Nalin Kumar (PW-2). We find that three prosecution witnesses, such as, Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) stated the same way in their examination-in-chief and supported the

prosecution case but this witness also could not stand creditworthy and reliable in her cross-examination. During her cross-examination, defence cross-examined this witness and she has also conceded that *"if darogaji had not written this fact in my statement under Section 161 Cr.P.C., then I cannot give reason for it."* We found that this witness also travelled behind her statement given to the Investigating Officer under Section 161 Cr.P.C. and in her examination-in-chief, she narrated totally different and improved statement. From this, it becomes amply clear that this witness during recording her statement totally improved and changed her version in the Court. We also found that major and material contradictions that go to the root of the prosecution story, has been committed by this witness in her statement. From perusal of the evidence of this witness Pushpa (PW-3), it is amply clear that this witness was also not an eye-witness of the occurrence dated 12.08.1982. This witness was not going with her father deceased Girijashankar Lal for purchasing Pooja samagri and her salwar-suit. Learned trial Court has given lengthy and reasonable discussion and rightly appreciated the evidence of this witness and has found that this witness was projected to strengthen the prosecution story. The trial Court in right perspective and in legal manner disbelieved the veracity of this witness. We found no illegality or perversity in appreciating the evidence of this witness by the trial Court.

17. From the evidence available on the record, it appears that prosecution tried to project Pancham (PW-1), Nalin Kumar (PW-2), Pushpa (PW-3) as eye-witnesses of the incident. Pancham (PW-1) in his evidence has stated that he himself had seen the occurrence committed by the accused and Nalin Kumar, Pushpa and Ayodhya had also seen the commission of the occurrence and they were also present at the scene of the occurrence. In the same way, Nalin Kumar (PW-2) has also stated that Pancham (PW-1), Pushpa (PW-3) and Ayodhya had also seen the

commission of the occurrence by the accused persons. Nalin Kumar (PW-2) has also stated that apart from him, Pancham, Pushpa, Ayodhya are also eye-witnesses of the incident and they were also present at the scene of the crime.

18. In the same way, Pushpa (PW-3) has also stated in her evidence that, apart from her, Pancham (PW-1), Nalin Kumar (PW-2) and Ayodhya were also present at the scene of the crime and they had seen commission of the crime with their own eyes but the trial Court, after evaluating and appreciating the evidence of all three prosecution witnesses, found that all the above three prosecution witnesses were not present at the scene of the crime. Their presence at the place of occurrence was highly doubtful and suspicious. We have also gone through the evidence of all three prosecution witnesses and we find that the prosecution tried to plant and project Pancham, Nalin Kumar and Pushpa as eye-witnesses of the incident. However, the prosecution miserably failed in its attempt to prove its case beyond reasonable doubt.

19. We found that as per prosecution story, Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) and Ayodhya were present at the scene of the occurrence when accused-respondents were committing the crime but we are surprised to see that four persons from the deceased' side were present at the place of occurrence at a distance of 10-12 pace but none of them tried to save the life or make a hue and cry against the accused persons.

20. It is also clear from the evidence that from the scene of crime, village Rudrapur was situated about 100-150 paces but prosecution witness Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) only as per the prosecution story were present at the spot, but they all were stood as a moot spectator to the commission of crime. None of the prosecution witnesses made any attempt to save the life of deceased Girijashankar Lal and

also all the three prosecution witnesses not tried to get help from any other villagers/persons. Although village Rudrapur was near at a distance of about 100-150 paces. Time of commission of the occurrence was 10:30 A.M. and at that time, pathway may be full of passers-by. Apart from the prosecution witnesses, many other people may come and go from the road where incident took place. No single injury of abrasion or fire-arm injury of pellet has been received by the prosecution witnesses, such as, Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3).

21. In view of the above facts, it is clearly evident that prosecution purposely projected Pancham (PW-1), Nalin Kumar (PW-2), Pushpa (PW-3) as eye-witnesses of the incident, but in reality Pancham (PW-1), Nalin Kumar (PW-2) and Pushpa (PW-3) are not the eye-witnesses of the incident and they were not present at the place of occurrence.

22. On the point of motive, trial Court in respect of enmities between some of the accused and deceased Girijashankar Lal on one hand, and between accused Shanti Vijay Singh and deceased Girijashankar Lal on the other hand are concerned, trial Court in para 22 of the judgement has fully discussed the motive about commission of the crime. As per the prosecution story, the motive for commission of the crime was enmity between some of the accused and Girijashankar Lal, secondly between accused Shanti Vijay Singh and Girijashankar Lal, who were rival candidates in the elections of Pradhan and thirdly Shanti Vijay Singh and others, who are the erstwhile Zamindars, who used to ill-treat the poor villagers and Girijashankar Lal used to provide succour to the villagers. The trial Court fully discussed the so-called above three kinds of enmities between the deceased Girijashankar Lal and accused persons and found that only on the ground of enmity, accused-respondents were falsely implicated in this case. We have also perused the evidence in this regard and also finding given by the trial Court on the point, then we find

that prosecution only on the ground of enmities and rivalry between the deceased Girijashankar Lal and accused-respondents, has falsely implicated the accused-respondents in this case.

23. Hon'ble Supreme Court in the case of **Sushil And Others v. State of U.P., 1995 SSC (Cri.) 388** and in the case of **State of Punjab v. Sucha Singh, (2003) 3 SCC 153**, has held that *"enmity is a double edged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication."* Therefore, only on the basis of enmity, the accused-respondents cannot be connected with the crime and held guilty for the crime. For holding guilty any man for the commission of any crime, full proof evidence either circumstantial or direct or last seen together must be present so cogently that accused persons could be connected with the crime on the basis of that evidence. Thus, it appears and evident from the evidence that prosecution on the ground of enmities and rivalry falsely implicated the accused-respondents in this case for commission of the crime.

24. We also found that due to so-called enmity and rivalry between the deceased Girijashankar Lal and accused-respondents, prosecution falsely implicated accused/respondents in this case. Prosecution due to so-called enmity and rivalry only on the ground of suspicion and doubt has falsely implicated the accused-respondents in this case but suspicion and doubt, however, so strong cannot take place of proof or evidence. For holding any person guilty for any crime, strong evidence beyond reasonable doubt must be adduced by the prosecution.

25. Hon'ble Supreme Court in the case of **State of Odisha v. Banabihari Mohapatra And Another, Special Leave Petition (Criminal) No. 1156 of 2021; decided on 12.02.2021** has held that *"it is well settled by a plethora of judicial pronouncement of this*

Court that suspicion, however strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt."

26. This proposition had also been asserted by the Hon'ble Supreme Court in the case of ***Sujit Biswas v. State of Assam;*** *reported in* ***AIR 2013 SC 3817***. Thus, we find that due to so-called enmities and rivalry, accused-respondents were implicated in this case on the ground of suspicion and doubt without any cogent and reliable evidence against them.

27. From the postmortem report of deceased Girijashankar Lal, Ext.Ka-15, prepared by medical witness Dr. G.N. Tiwari (PW-6), total six injuries were found on his body. From perusal of the postmortem report, it is clear that the deceased Girijashankar Lal was murdered by gunshot injury and also by cutting his respiratory system by sharp-edged weapon but there is no direct evidence against the accused-respondents and there is also no indirect evidence or incriminating material from which accused-respondents can be connected with the crime. Thus, we find that so-called eye-witnesses as projected by the prosecution, i.e., Pancham (PW-1), Nalin Kumar (PW-2), Pushpa (PW-3) were not an eye-witnesses of the incident. Prosecution could not adduce any circumstantial evidence and also prosecution could not produce any incriminating material against the accused persons by which accused-respondents could be held guilty for commission of the crime.

28. In light of the above observations and discussions of the evidence, we find that no perversity or illegality was committed by the trial Court regarding the order of acquittal in respect of the accused-respondents. We are also of the considered view that acquittal order passed by the trial Court is fully based on evidence on the record and supported by lengthy reasoning, therefore, in view of the above, we find no force in the arguments of learned

A.G.A. in this respect, hence we find the Government Appeal is liable to be rejected.

29. The Government Appeal is, accordingly, dismissed confirming the judgment and order dated 22.05.1985 passed by learned trial Court.

30. Office to send copy of this judgment to the trial Court. The trial Court records be transmitted.

(Vinai Kumar Dwivedi,J.) (Salil Kumar Rai,J.)

December 11, 2025
Shubham

Digitally signed by :-
SHUBHAM KUMAR AGRAHARI
High Court of Judicature at Allahabad