
(1986) 03 AHC CK 0026
In the Allahabad High Court
Case No : Criminal Appeal No. 251 of 1978

Amrit Lal and others (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-03-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 502

Citation : (1986) 03 AHC CK 0026

Hon'ble Judges : Parmeshwar Dayal, J and G.B.Singh, J

Final Decision : Disposed Of

Judgement

G.B. Singh, J.

This appeal is directed against the judgment and order, dated 30/31.3.78 passed by the Sessions judge Pratapgarh, convicting the appellants under Section 302/34 of the Indian Penal Code and sentencing them to life imprisonment.

The arguments in the appeal were heard on 18.3.86 and following order was passed:

"Head arguments. For reasons to follow the appeal is allowed and the judgment and order passed by the learned lower court convicting and sentencing the appellants Amrit Lal, Jhalare and Maikoo Lal under Section 302/34 I.P.C. are set aside. The appellants, are acquitted of the charge levelled against them. They are on bail, their bailbonds are discharged and they need not surrender to the same."

Now the reasons in support of the above order below.

The case of the prosecution was that the appellants were harbouring illwill against Hira Lal deceased, because he appeared as a witness in a criminal case against Maikoo Lal appellant. Amrit Lal appellant is son and Jhalare appellant is cousin of Maikoo Lal appellant. On the night between 26/27.10.76 at about midnight the appellants came to the house of Hira Lal and complained that the

bullocks of Hira Lal were grazing their crop. Hira Lal went to see it along with the appellants. When they reached near the field where the bullocks were grazing, Armit Lal appellant who was armed with Ballam and the other two appellants who were armed with Lathis, started assaulting Hira Lal with their weapons. Smt. Gayapati wife and Sunder Lal brother of Hira Lal followed Hira Lal while the appellants were taking him towards that field. When the appellants started belabouring Hira Lal, Smt. Gayapati and Sunder Lal made outers, whereupon some persons of the village including Brij Lal, Dasai and others arrived and the appellants then went away leaving Hira Lal lying injured. Brij Lal brought Hira Lal to the house of the injured where he died soon after the incident.

The first information report of the incident was lodged by Smt. Gayapati at Police Station Kunda district Pratapgarh on 27.10.76 at 10.05 a.m. The Police Station is at a distance of 8 miles from the place of incident. SubInspector Ashok Kumar (P.W. 8) investigated the case. He interrogated the witnesses, prepared siteplan and sent the dead body for postmortem examination. The postmortem examination was conducted by Dr. S.C. Srivastava (P.W. 6) on 28.10.76 in the mortuary Pratapgarh. He found three lacerated wounds, three punctured wounds, six contusions and three abrasions on the person of Hira Lal. On internal examination he found blood clot present under skin of head, fissured fracture 6" x 1/8" extending from left temporal bone towards the back and upside and fissured fracture 2" x 1/8" on left cranial fossa extending forward and inwards. He further found that on left side of brain congestion was present in an area of 4" x 3". According to Dr. S.C. Srivastava (P.W.6) the death was caused due to shock, haemorrhage and injury to brain as a result of head injuries. In his statement he has made it clear that the punctured wounds could be caused by spear and the other injuries could be of Lathi blows and all the injuries were sufficient in the ordinary course nature to cause his death. The Station Officer Chhabi Nath Tewari (P.W.5) completed the investigation and submitted the chargesheet.

The defence of the accused was that they were falsely implicated in the case, on account of enmity with the police.

On behalf of the prosecution four witnesses viz., Smt. Gayapati (P.W. 1), Sunder Lal (P.W.2), Brij Lal (P.W.3) and Dasai (P.W.4) were examined to prove the incident. Dasai (P.W.4) did not support the prosecution case due to which he was declared hostile. Since he does not state that the assault committed by the appellants, his testimony can be ignored on this count only.

Thus, the testimony of other three witnesses remains for consideration. The learned Session judge believed their testimony and convicted and sentenced the appellants as mentioned above.

It was argued by the learned counsel for the appellants that the testimony of Smt. Gayapati (P.W. 1), Sunder Lal (P.W.2) and Brij Lal (P.W. 3) was not reliable as there was no source of light at the time of the incident; the crop of the

appellants was not found grazed by the Investigating Officer and there are some improbabilities in the case due to which the prosecution case could not be believed and the finding of the learned Sessions judge cannot be allowed to stand. We find much force in this argument.

The occurrence took place during night for time. Sunder Lal (P.W. 2) and Brij Lal (P.W. 3) have stated that it was a dark night. In the first information report, it has not been mentioned if there was any light at the time of the incident and the witnesses saw and recognized the appellants in the same. It is significant to note that even at the stage of investigation Smt. Gayapati (P.W. 1) did not state before the Investigation Officer that "any witness possessed torch and he flashed it at the time of the incident. The torch light came into existence for the first time while Brij Lal (P.W. 3) was being interrogated by the Investigating Officer. He stated that he was carrying a torch and he flashed it at the time of the occurrence. It is significant to note that he did not show it to the Investigating Officer nor any attempt was made by the Investigating Officer to see if it was in working condition. He did not prepare any memo in this connection. Brij Lal (P.W. 3) is not named in the first information report. Sunder Lal (P.W. 2) stated that he had also a torch at the time of the incident and he flashed it. No other witness supports him on this point. His torch was also not examined by the Investigating Officer. Both Sunder Lal (P.W. 2) and Brij Lal (P.W. 3) are brothers of Hira Lal deceased. The existence of any light at the time of the incident was strenuously assailed on behalf of the accused appellants. In view of the aforesaid circumstances it appears to be extremely doubtful if there was any light of electric torch at the time of the occurrence.

Smt. Gayapati (P.W.1) states that Hira Lal was taken by the appellants along with them on the pretext that his bullocks were grazing their crop on a field. Smt. Gayapati (P.W.1) Sunder Lal (P.W. 2) and Brij Lal (P.W.3) stated that when they reached near the place of incident, they found that the bullocks were grazing the crop of the appellants. SubInspector Ashok Kumar (P.W. 8) who prepared the siteplan and inspected the place of incident has clearly stated that he did not find any grazed crop. This statement of the Investigating Officer demolishes the case of the prosecution that on the relevant night the appellant's took away Hira Lal along with them with the pretext that his crop was being grazed.

Smt. Gayapati (P.W. 1) is wife and Sunder Lal (P.W. 2) and Brij Lal (P.W. 3) are brothers of Hira Lal deceased. No independent witness has come forward to support the prosecution case. Brij Lal (P.W. 3) is not named in the first information report. Brij Lal states that when he brought Hira Lal injured to his house, his clothes also became blood stained. He did not show his blood stained clothes to the Investigating Officer and no Fard was prepared in that connection during the investigation. Brij Lal (P.W. 3) went to the Police Station along with Smt. Gayapati. If he was a witness of the incident his name would not have been omitted in that document. The presence of Brij Lal (P.W. 3) at the time of occurrence, therefore appears to be extremely doubtful.

Smt. Gayapati (P.W. 1) states that the appellants were unarmed when they came to her house to take Hira Lal. She closely followed Hira Lal and the appellants while they were going towards the field of the appellants. She could not explain as to how and when the appellant became armed with spears and Lathis. The documents Exts. Kha 3 to Kha 11 produced on behalf of the appellants show that Hira Lal was involved in several criminal cases and even Smt. Gayapati was an accused in a case under Section 4,12 of the Indian Penal Code along with her husband Hira Lal. When she was crossexamined about these cases she denied. This denial appears to have been made so that it could not be inferred that there were several enemies of Hira Lal and he could be murdered by some other persons also. If there was no light at the time of the incident she could not recognise the appellants. She could not tell the time when the first information report was scribed at her instance. The statement of Smt. Gayapati (P.W.1) does not, therefore, inspire confidence.

Sunder Lal (P.W. 2) being brother of the deceased appears to. be so interested that he introduced another torch in evidence. He also showed ignorance about the involvement of Hira Lal in the aforesaid criminal cases. Before the Investigating Officer he stated that he was sleeping in his house but in the, witness box he stated that he was lying awakened. This improvement appears to have been made so that he may follow Smt. Gayapati and witness the incident. These facts indicate that he is also not a truthful witness and his testimony was wrongly relied upon by the learned Sessions Judge.

It is therefore clear that the testimony of all the three eye witnesses of the incident suffers from infirmities. There is sufficient, admixture of deliberate falsehoods, embellish parents and suppressions in their statements and it completely pollutes the entire fabric i of the narration given by these witnesses. It is true that the appellate court should not ordinarily interfere with the trial court's opinion as to the credibility of witnesses because he alone knows the demeanor of the witness and he alone can appreciate the manner in which questions are answered with honest endeavour or with doubtful plausibility and he alone can form a reliable opinion as to whether the witness had emerged with credit from a crossexamination, but where the evidence is not well balanced and the matter is one of inference, the appellate court can set aside the finding of the trial court in this connection. In the present case the testimony of these witnesses being tainted with falsehood is clearly liable to be rejected and the assessment made by the trial court deserves interference.

The incident took place at about midnight. The first information report was lodged the next day at 10.05 a.m. The Police Station is at a distance of about 8 miles from the place of occurrence. Such a distance can be covered even on foot within two hours. Thus, there was delay for about 8 hours in the first information report. It has come in evidence that the village Chaukidar lives in the same village. He accompanied Smt. Gayapati when she went to lodge the report. There is no satisfactory explanation as to why the village Chaukidar or one of the

brothers of Hira Lal deceased could not be sent during night time to lodge the written report. The courts always view the F.I.R. with grave suspicion when there has been delay in making it. It throws cloud of suspicion on the seeds of the prosecution. When there is unexplained delay it forces the court to adopt a rule of caution while assessing the credibility of the ocular account and if there is some suspicious circumstance about it the accused become entitled to get benefit of it. Thus this circumstance also militates against the credibility of the prosecution case.

In the first information report, it has not been mentioned as to what was the motive for the accused to commit the crime. It was, however, disclosed in evidence that" Hira Lal deceased appeared as a witness in a criminal case against Maikoo, so he was assaulted by the appellants. When Smt. Gayapati (P.W.1) was crossexamined on this point she made statement to the effect that Hira Lal was named as a witness in the criminal case. No document, has been produced in support of this case. It is, therefore, clear that even correct motive has not been disclosed in the present case. It may be mentioned that it is not necessary for the prosecution to allege and prove motive but if a motive is suggested it must be proved, because then it becomes relevant to enquire whether the pattern of the crime fits in with the alleged motive. The absence of any satisfactory proof for the suggested motive and the manner in which Hira Lal was said to be taken and assaulted also indicate that the case of the prosecution is tainted and unreliable.

The accused appellants suggested their false implication on account of enmity with the Police. It is true that the accused did not narrate any incident on account of which the Police became illdisposed towards them nor did they produce any evidence in this connection but this fact cannot be much emphasised in view of the nature of prosecution evidence which falls far short in proving their guilt.

From the above discussion it is clear that the case against the appellants was not proved beyond doubt by the reliable evidence and their appeal succeeds.