
(2005) 02 AHC CK 0192
In the Allahabad High Court
Case No : Criminal Appeal No. 283 of 1982

Anil Kumar and Om Prakash alias Pappu (In Jail) APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2005) 02 AHC CK 0192

Hon'ble Judges : M. Chaudhary, J;Imtiyaz Murtaza, J

Bench : Division Bench

Advocate : Brijesh Sahai and V. Singh, for the Appellant; S.S. Yadav and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Imtiyaz Murtaza , J.—The present appeal has been filed against the judgment and order dated 27.1.1982 passed by II Addl. Sessions Judge, Aligarh in Session Trial No. 514 of 1980 whereby the appellants Anil Kumar and Om Prakash alias Pappu have been convicted under Sections 302 and 302/34 I.P.C. respectively and sentenced to under go rigorous imprisonment for life.

2. The brief facts of the case, as mentioned in the report lodged by Shanti Swaroop son of Bhagwan Das, are that his nephew Umesh Kumar had gone to worship in Hanuman temple situated at Achal Talab in the evening of 17.6.1980. Anil Kumar and Om Prakash alias Pappu who are of bad character persons were standing at the temple and teasing the ladies and girls. Umesh Kumar asked them not to do so and some altercation had taken place. Ganga Saran had intervened in the matter. They had threatened Umesh Kumar and had left the place. It is further stated that on 19.6.1980 at about 9.00 A.M. he and Umesh Kumar had gone to worship at Achal Talab temple and when after Darshan they were coming out both these accused appellants surrounded them. Umesh Kumar and Om Prakash alias Pappu caught hold of him and Anil Kumar started giving

knife blows. On hearing the alarm raised by him and Umesh, Pradeep Kumar Saxena and Anil Kumar resident of Manik Chauks, Satya Prakash and other persons reached there. The accused ran away towards Paliwal College leaving Umesh Kumar in injured condition. Vishnu and Govind took Umesh Kumar to Malkhan Singh Hospital. There are injuries on his back, leg and stomach. His condition was serious. The report was lodged by him on 19.6.1980 at 10.05 A.M. u/s 307 I.P.C.

3. After the registration of the F.I.R. S.I. Rakesh Pratap Singh started investigation. He recorded the statement of witnesses, prepared the site plan (Ext. Ka-4) and took in his possession the blood stained and plain mud from the spot and prepared its recovery memo (Ext. Ka-5). He prepared the inquest report (Ext.Ka-6) and also took in his possession the blood stained cloths of the deceased Umesh Kumar (Ext. Ka-7). After the death of the deceased case was converted u/s 302/34 I.P.C. at 12.30 (Ext.Ka-10).

4. The post mortem examination of the deceased was conducted by Dr. G.S. Gupta who had noted the following ante mortem injuries:-

1. Incised wound 1/2" x 1/2" muscle deep middle of Lt fore arm.
2. Incised wound 1" x 1/2" skin deep left elbow
3. Incised wound 1/2"x 3/10" skin deep right side chest skin deep lower part.
4. Incised wound 3/4" x 3/10" muscle deep left Arm back
5. Incised wound 1/2" x 1/2" muscle middle left forearm
6. Lacerated wound 3/4" x 2/10" muscle deep right elbow
7. Incised wound 1" x 2/10" x muscle deep right chest
8. Incised wound 1" x 1/4" muscle deep left chest
9. Incised wound 1" x 2/10" muscle deep skin right chest
10. Incised wound 1/2" x 2/10" muscle deep right chest outside middle
11. Incised wound 3/4" x 2/10" inner side right chest.

5. In the opinion of the doctor, cause of death of the deceased was due to shock and hemorrhage due to injuries described. After conclusion of the investigation charge sheet has been submitted in the court against the appellant and one Deonath has been acquitted by the Sessions Judge and the State has not filed any appeal against his acquittal.

6. The prosecution in order to prove its case examined nine witnesses: P.W.1 Mahesh Chandra stated about the motive of the offence; P.W.2 Dinesh Chandra was examined to prove charge against acquitted accused Deonath; P.W.3 Shanti Swaroop is complainant of the case and is an eye witness; P.W.4 Ram Prakash is also an eye witness; P.W.5 Dr. G.S. Gupta conducted post mortem examination of

the deceased; P.W.6 Krishna Murari also stated about the concealment of evidence against Deonath; P.W.7 Surendra Kumar Kaushik is Second Investigating Officer. He submitted the charge sheet against the accused (Ext. Ka-3); P.W.8 is constable Ummed Singh who had escorted the dead body of the deceased for post mortem examination; and P.W.9 S.I. Rakesh Pratap Singh is the First Investigating Officer.

7. The case of the defence is of denial and they had examined four witnesses in their defence. D.W.1 Sheo Charan is a photographer. He stated that in front of the house of accused Anil Kumar some constables live in a house and supply of electricity is through his house. D.W.2 is uncle of the accused Anil Kumar. He also stated about his enmity with the police. D.W.3 Trilok Chandra Sharma. He stated that Anil Kumar works in his shop and on the date of occurrence he came on the shop. D.W.4 is Correspondent of news paper "Dainik Prakash" at Aligarh. He proved that this news paper (Ext. Ka-6) was published at his press and in column No. 6 at page 4 the important information was got published by Kailash Chandra Gupta.

8. The Sessions Judge relying upon the prosecution evidence convicted the accused appellants as aforesaid and acquitted Deonath.

9. We have heard Shri Brijesh Sahai, learned counsel for the appellants and the learned A.G.A. for the State and perused the entire record and order of Sessions Judge.

10. Learned counsel for the appellants submits that the appellants have been falsely implicated in this case, the presence of the complainant at the time of occurrence is highly doubtful, the occurrence might have taken place during dark hours of night, the time of occurrence is wrongly shown to create the presence of witnesses, and the injuries of the deceased were not sufficient in the ordinary course of nature to cause death immediately.

11. In order to appreciate the submissions of learned counsel for the appellants we have to examine carefully evidence on record.

12. P.W.1 Mahesh Chandra stated about the motive for the commission of this murder of Umesh Kumar. He stated that at about one and half years ago at about 10.00 A.M. he was present at his house and heard that Umesh Kumar has been stabbed with knife. He went to Achal Talab but Umesh Kumar had already been taken to the hospital. He further stated that one day prior to the occurrence he had gone to worship at the temple when he came out from the temple he found that Umesh Kumar was quarreling with 2-3 persons and their names were Anil Kumar and Om Prakash alias Pappu. He did not know the cause of quarrel but he and Ganga Saran had intervened and Anil Kumar and Om Prakash ran away after threatening Umesh Kumar. In the cross-examination he stated that he lives about two furlongs away from the temple. There are shops near the temple. He stated that he visited the temple on Tuesday. He did not know the name of any of the priests. Om Prakash used to sell flower near the temple. He stated that he

was interrogated by the police after 10-15 days of the occurrence. He stated before the Investigating Officer that Ganga Saran was present on the spot.

13. P.W.2 Dinesh Chandra and P.W.6 Krishna Murari did not say anything about the appellants.

14. P.W.3 Shanti Swaroop is informant and real uncle of the deceased Umesh Kumar. He stated that he had gone to temple Gilahraj at about 8.45 or 9.00 A.M. He was accompanied by his nephew Umesh Kumar. He further stated that Umesh Kumar was caught hold by Om Prakash alias Pappu and Anil Kumar had inflicted knife blows. On hearing noise Pradeep, Anil had also come apart from other persons whose name he did not know. The injured was taken to the hospital by Vishnu and Govind. He lodged the written report (Ext. Ka-1) at police station Kotwali. Umesh had expired after reaching the hospital. In the cross-examination he stated that two days prior to the occurrence some quarrel had taken place at the temple but he was not present at that time. He did not make any attempt to save and lift Umesh Kumar (deceased) from the place of occurrence. The blood was oozing out from the body of Umesh Kumar. He did not try to tie the wounds with some cloths. He wanted to give immediate medical aid to Umesh Kumar. The Hospital of Insurance Company was situated at a distance of 20 paces from the place of occurrence but he did not ask any body to take the injured to that hospital. He did not know who brought the rickshaw for taking Umesh Kumar to the hospital. He did not know if Umesh Kumar disowned by his father for the purposes of property and as such an information was published in Amar Ujala news paper. He further stated that he was residing in the house No. 46 and the father of the deceased was residing at the adjoining house. Both have separate Ration Cards. He did not inform the parents of the deceased and did not send any body to give this information to his parents.

15. P.W.4 Ram Prakash is also an eye witness. He stated that he had gone for worship at the temple of Gilahraj where he saw that Umesh Kumar was caught hold by Pappu and Anil Kumar was giving him knife blows. After arrival of the witnesses the accused persons ran away. He stated that Investigating Officer had called him at Achal Tank after 10-12 days of the occurrence and he had shown his place to the Investigating Officer where from he had seen the incident. He stated that the Investigating Officer had interrogated him and his signature were obtained by him. He denied to have stated before the Investigating Officer that he was going for Darshan when the occurrence took place. He did not know the reason why the Investigating Officer had mentioned in his statement u/s 161 Cr.P.C. He could not state the name of any person who were present on the spot except the accused persons and the witnesses of this case. He did not know the name of temple or adjoining shop keepers. He did not disclose his name and address on the spot to any body. He did not mention to any police personnel or S.I. about his presence on the spot prior to the investigation u/s 161 Cr.P.C. He stated that he was interrogated once by the Investigating Officer although he remained at his shop. He stated that he purchased the Tractor from Bhalla and

Company and purchase the parts of Tractor and only when any part of the tractor is not available with Bhalla and Company only then he purchase those parts from the shop of Kailash Chandra as such he knew Kailash Chandra, father of the deceased. He stated that he had never appeared as a witness infavour of Kailash Chandra in any case and had never been in the service of Kailash Chandra.

16. P.W.7 Surendra Kumar Kaushik is the second Investigating Officer. He took the investigation of the case on 20.6.1980. He interrogated the witnesses and after completing the investigation submitted the charge sheet (Ext.Ka-3). He did not prepare the site plan. He recorded the statement of Mahesh Chandra (PW-1) on 19.7.1980 and Ram Prakash on 12.7.1980 at the spot. He stated that there was no reason to take the investigation from the earlier Investigating Officer.

17. P.W.8 Ummed Singh is a constable. He escorted the dead body for the post mortem examination. He presented the dead body on 20.6.1980 before Dr. G.S.Gupta and had identified it.

18. P.W.9 Rakesh Pratap Singh is the first Investigating Officer. He stated that he recorded the statement of witnesses and prepared the site plan (Ext. Ka-1). He also collected blood stained and plain earth and prepared its recovery memo (Ext. Ka-5). He prepared inquest report (Ext. Ka-6). He had also taken the blood stained cloths of the deceased and prepared its recovery memo (Ext. Ka-7). The chick F.I.R. was prepared by Head Moharrir Brij Bhushan Sharma (Ext. Ka-8). On 21.6.1980 the case was converted by head moharrir Brij Bhushan Sharma vide G.d. No. 31 (Ext. Ka-10). He did not record the statement of the doctor who had examined the injured. He did not see the bed head ticket. He did not know who had got admitted the injured in the hospital. He had recorded only the statement of Shanti Swaroop as an eye witness. He did not record the statement of other persons and shop keepers of close proximity of the place of occurrence.

19. We have carefully examined the testimony, of the eye witness. P.W.3 Shanti Swaroop is complainant of the case and a careful scrutiny of his statement indicates that his presence at the time of occurrence is highly doubtful and it is not safe to rely upon his testimony only because his evidence shows that he did not make any attempt to save the deceased who was his nephew and his conduct is very unnatural. He had not lifted Umesh Kumar from the place of occurrence who was lying in injured condition. He had not made any effort to provide medical aid to him. He stated that the Hospital of Insurance Company was situated at a distance of 20 paces from the place of occurrence. He did not ask any body to take the injured to that hospital. He did not accompany the deceased to the hospital. He also stated that he did not inform the parents of the deceased nor sent any body to give information to his parents. He stated that deceased was caught hold by Om Prakash alias Pappu and then Anil Kumar had given knife blows. The ante mortem injuries belies the manner of assault as stated by the complainant. The deceased has received large number of injuries on his hands also. A perusal of ante mortem injuries indicates that deceased has received most of the injuries either skin deep or muscle deep and in the post

mortem examination report no internal damage was found. The cause of death according to the doctor is shock and haemorrhage due to injuries described. The stomach was found empty. It appears that the deceased remained lying unattended for a long time otherwise the instantaneous death on account of these injuries is not possible. If the complainant was present at the time of occurrence he might have saved the deceased by providing immediate medical care.

20. The Investigating Officer had not interrogated the person who taken the injured to the hospital nor he had examined the doctor who had attended him. He had not seen the bed head ticket of the deceased. All these infirmities indicate that he was not provided any medical aid. There is no link evidence to show that deceased was taken in injured condition to the Hospital where he succumbed to his injuries.

21. The other eye witness is P.W. 4 Ram Prakash. His name does not find place in the F.I.R. The first Investigating Officer had not recorded his statement. He further stated that he did not disclose his name and address on the spot to any body. There is inordinate and unexplained delay in recording his statement u/s 161. According to his own statement, Investigating Officer had recorded his statement after about 10 or 12 days. The testimony of P.W. 7 Surendra Kumar Kaushik indicates that he recorded the statement of Ram Prakash on 12.7.1980 after more than 20 days. His name is also not disclosed by P.W. 3 Shanti Swaroop. The delay in recording the statement u/s 161 Cr.P.C. is not explained by the prosecution. We are of the opinion that he is a got up witness and no reliance can be placed on his testimony.

22. In view of the above discussions, we have come to the conclusion that the appeal deserves to be allowed.

23. In the result the appeal is allowed. The order dated 27.1.1982 passed by II Addl. Sessions Judge, Aligarh is set aside. The appellants are acquitted of the charge. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.