
(2005) 11 AHC CK 0211
In the Allahabad High Court
Case No : Criminal Appeal No. 264 of 1981

Anil Kumar (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 394, 397

Citation : (2005) 11 AHC CK 0211

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : S.P. Singh Raghav and Anil Kumar, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Mukteshwar Prasad, J.—Accused Anil Kumar, son of Tara Chand, has come up In appeal against the judgment and order-dated 31.1.1981 passed by the then Additional Sessions Judge, Meerut in S.T. No. 248 of 1980 whereby he convicted the appellant u/s 394 read with Section 397 I.P.C. and sentenced him to suffer rigorous imprisonment for a period of seven years.

2. In nut shell, the facts of the prosecution case leading to the prosecution of the appellant were as under:-

P.W. 3 Vikram Dutt handed over a written report at P.S. Kotwali Meerut on 1.4.1980 and the police registered a case at crime No. 176 u/s 394 I.P.C. at 10-00 P.M. The first informant alleged in his report that his father Babu Ram had a grocery shop No. 19 in Mohalla Kailash Puri of Meerut Town. On 1.4.1980 at 8-15 P.M., Babu Ram was present at his said shop. The appellant arrived there, whipped out his knife and asked Babu Ram not to raise alarm failing which he would be killed. Accused is a resident of house No. 1 Durga Nagar and was well known to Babu Ram from before the incident. When accused tried to lift cash chest from the shop, Babu Ram prevented him and raised alarm also. Thereupon,

accused gave him two knife blows and took away cash chest. On hearing the alarm, Munendra Tyagi, Kuldip Narain Saxena and Budh Prakash arrived there and chased the accused. Anil Kumar took shelter in the house of Vinod, son of his maternal uncle. Accused took out Rs. 750/- cash from the cash chest and threw the chest into the house of Banarasi Das, Post Master.

3. Vikram Dutt got information about the incident of robbery from Vinod Halwai and reached his shop and found his father in injured condition. The incident was narrated to him by his father and aforesaid witnesses. Vikram Dutt prepared a written report and reached Police Station. The flying squad arrived on the spot and the injured was also taken to the Police Station in police vehicle.

4. The injured was sent to P.L. Sharma Hospital, Meerut where he was examined at 10-45 P.M. on the same night by P.W.1 Dr. A. S. Rana. Dr. Rana found the following injuries on the person of Babu Ram.

1. Incised wound 2 cm. x 0.2 cm. x bone deep on the middle of nose bridge in middle part. Transversely placed.

2. Incised wound 2 cm. x 0.2 cm. x skin deep on the right side face 2 cm. below right lower eye lid.

3. Abrasion 1 cm. x 0.5 cm. on the back of right elbow, middle part.

4. Abrasion 3 cm. x 0.2 cm. on the front of right leg lower part.

5. In the opinion of doctor, all injuries were simple fresh and injuries No. 1 and 2 were caused by sharp edged weapon.

6. The case was investigated by P.W.6 S.I. Jagveer Singh. He started investigation and interrogated Vikram Dutt, Babu Ram, Munendra Tyagi and Ors. at the Police Station. After inspection of the scene of incident, a site-plan was prepared. The wooden cash chest was also checked and was entrusted to Babu Ram. On 2.4.80, a charge sheet was submitted against the accused.

7. After committal of the case, accused Anil Kumar was charged u/s 394 read with Section 397 I.P.C. to which he pleaded not guilty

8. In support of its case, the prosecution examined P.W.1 Dr. A.S. Rana, the Medical Officer of P.L. Sharma Hospital, Meerut who had examined the injuries of Babu Ram, P.W.2 Babu Ram, the victim of robbery, P.W.3 Vikram Dutt, the complainant, P.W.4 Munendra Tyagi, who is said to be an eye witness, P.W.5 constable Shiv Shyam, who prepared F.I.R. and made entry in the G.D. and P.W.6 Jagveer Singh, I.O. of the case.

9. The accused in his statement recorded u/s 313 Cr.P.C. admitted that he was well known to Babu Ram Gupta from before 1st April, 1980. He, however, totally denied all accusations and pleaded his false implication in the case on account of enmity. He adduced no evidence in his defence

10. After having heard learned Counsel for the parties and considered the

evidence on record, learned Judge found the accused guilty for committing an offence punishable u/s 394 read with Section 397 I.P.C. and sentenced him to suffer rigorous imprisonment for a period of seven years.

11. I have heard learned Counsel for the appellant at length, learned A.G.A. and perused the record carefully.

12. Learned Counsel for the appellant has assailed the judgment under appeal mainly on the grounds that out of three eyewitnesses P.W. 4 Munendra Tyagi alone was produced in the witness box. Admittedly, the appellant was well known to the victim of robbery and as such, he could not dare to commit robbery in question, as alleged by the prosecution. It was also submitted that the shops situate in the neighbourhood were open. However, no shopkeeper came forward to rescue Babu Ram or to chase the appellant. The I.O. did not find blood inside or outside the shop nor he interrogated Banwari who had a sweet shop adjacent to the shop of Babu Ram. P.W.2 Babu Ram was an old man, aged about 70 years. He, however, chased the appellant alongwith other witnesses. Further there is contradiction in the prosecution evidence regarding timing of the arrest of the appellant on the fateful night. The investigation has been highly-sketchy and charge sheet was submitted within 24 hours of lodging of the F.I.R. at the Police Station. In this view of the matter, the appellant is entitled to be acquitted.

13. On the other hand, learned Counsel for the State has supported the judgment and contended that minor discrepancies in the evidence led by the prosecution are not sufficient to throw out the entire prosecution case and the prosecution is not required to examine all the eye witnesses and the appeal is liable to be dismissed,

14. I have considered the submissions made on behalf of the parties and have scrutinized the evidence with caution. Admittedly, the appellant was well known to the victim and members of his family from before the incident in question, It is further admitted that P.W.3 Vikram Dutt is not an eyewitness and the prosecution case rests on the testimony of two witnesses Babu Ram and Munendra Tyagi.

15. P.W. 2 Babu Ram tried to support the prosecution version but in my opinion he failed in his attempt. According to Babu Ram, on the impugned date and time his shop was open and electric bulb was burning inside the shop, There was light on the road also. He further admitted that there was no customer and all adjoining shops were closed at the time of alleged incident. In cross-examination, Babu Ram disclosed that blood had fallen down from the injuries on the Takhat and the road.

16. P.W. 4 Munendra Tyagi, Kuldip Narain Saxena and Budh Prakash are said to have arrived at the scene of incident and all the three also joined Babu Ram in chasing the appellant. P.W. 4 Munendra Tyagi admitted that he did not know the appellant by name and he saw the appellant for the first time in the night In question. He saw the face of Anil Kumar when he was running away alongwith

the looted cash chest. The witness contradicted Babu Ram and stated in clear words that there were 4-5 shops quite adjacent to the shop of Babu Ram, out of which 3-4 were open and one was closed. The sweet shop was open at the time of robbery and the owner of the shop alongwith his son were present there. They, however, did not chase the appellant. P.W. 2 Babu Ram testified that P.W. 4 Munendra Tyagi did not reside in the house owned by his nephew Dharamveer. On the other hand, P.W. 3 Vikram Dutt and P.W. 4 Munendra Tyagi admitted in very clear words that Dharamveer is brother of Vikram Dutt and Munendra Tyagi and Kuldeep Saxena resided in the house of Dharamveer as tenants. P.W. 3 Vikram Dutt further admitted that third witness Budh Prakash was his brother-in-law (not real) and his wife's cousin was married to him it means, all the three witnesses viz. Munendra Tyagi, Kuldeep Saxena and Budh Prakash are highly interested and out of three, two were tenants in the house of Dharamveer, brother of the informant. Budh Prakash was closely related to the informant, In other words, no independent witness/shopkeeper appeared in the witness box to support the prosecution version

17. It does not inspire confidence that an old man, aged about 70 years who had sustained two incised wounds on his face and nose also was chasing the appellant alongwith other in the night in question. This statement of Babu Ram does not stand to reason.

18. P.W. 3 Vikram Dutt who is informant claimed himself to be son of Babu Ram in his written report and disclosed his father's name as Babu Ram in the Court also. He, however, clarified that Babu Ram is his real uncle and his father is dead. He admitted that he was never adopted by Babu Ram. Thus I find that the testimony of the eyewitness as well as the informant is not wholly reliable and the trial Judge erred in placing reliance on their testimony. P.W. 4 Munendra Tyagi comes in the category of interested witnesses and he gave out that Babu Ram did not chase the appellant and remained sitting at his shop. In view of major contradiction in the testimony of Babu Ram and Munendra Tyagi, I find that learned Judge was not justified in accepting their testimony.

19. According to Vikram Dutt, the appellant was arrested by the police and brought to Police Station at about 10-20 P.M. on the fateful night Contrary to this, P.W. 5 constable Shiv Shyam deposed that S.I. T.R. Pandey and S.I. Shiv Singh arrested the appellant and brought to Police Station at 1-30 A.M. on 2.4.80. Thus, I find that there is contradiction regarding timing of arrest of the appellant also.

20. As mentioned above, I find that the investigation was done in hot haste and the investigation has been highly sketchy and slipshod, which was completed within 24 hours of the registration of the case at the Police Station. The I.O. did not bother to show the light point in the shop in question. He did not take pains to interrogate the adjoining shopkeepers and found no blood inside the shop

21. It has also come in the evidence that Rs. 750/- cash (currency notes) were

taken out by the accused from the cash chest and remaining cash (currency notes and coins) along with chest were thrown out of the house. I fail to understand as to why the appellant left cash kept inside the box.

22. In view of the aforesaid discussion and analysis of the entire evidence on record, I hold that prosecution could not bring home the charge against the appellant beyond all shadow of doubt. The testimony of the witnesses does not appear to be true and Babu Ram and Munendra Tyagi do not come in the category of reliable witnesses. They have contradicted each other on material points. In my opinion, the prosecution did not come with clean hands. Consequently, I hold that this appeal must succeed.

23. In the result, the appeal is allowed. The conviction and sentence recorded against the appellant are hereby set aside and he is acquitted. He is said to be in jail since June, 2005. He shall be released forthwith, if he is not wanted in any other case.

24. A copy of this judgment shall be sent to the Court below for necessary action and entries in the relevant register within a week with an intimation to this Court within six weeks.