
(1980) 04 AHC CK 0080
In the Allahabad High Court
Case No : Criminal Appeal No. 2340 of 1978

Anil Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-04-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 302, 323, 504

Citation : (1980) ACR 232

Hon'ble Judges : V.K. Mehrotra, J; P.N. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.N. Goel, J.—Anil Singh, youngman of 20 years, son of Darshan Singh, resident of Pukhrayan, police station Bhognipur, district Kanpur, has been convicted and sentenced u/s 302 IPC to undergo imprisonment for life.

2. Facts constituting the motive and the manner of occurrence may be stated at some length.

3. Jageshwar Prasad and Mahesh Prasad, natives of the town of Pukhrayan are real brothers. Prahlad Kumar PW 1 and Keshav Kumar deceased are sons of Mahesh Prasad. Prahlad Kumar has been adopted by Jageshwar Prasad. Anil Singh Appellant was fast friend of Keshav Kumar deceased. He was of a violent temperament and used to indulge in marpit. Therefore, his father sent him to his maternal grand father"s place at Faizabad. However, he used to often visit Pukhrayan. Several times he had taken some money from Keshav Kumar who also used to give him out of his pocket expenses. At the time of Diwali festival in the year 1971 Anil Singh asked Keshav Kumar to arrange for a sum of Rs. 2500/- because he wanted to purchase a revolver. He even extended threat to him that if he did not get the said amount by 14-11-1977, he would kill him. On 14-11-1977, Divya Jaycees Club arranged a Bal Mela and cultural programme on the occasion of the birth day of Pt. Jawahar Lal Nehru in Government Normal

School. Keshav Kumar and Anil Singh came there. It is alleged that Anil Singh took away Keshav Kumar from the Mela into the verandah of Dr. Daya Shanker Dwivedi at the back of the place of the fair, demanded money from him and on refusal, not only rebuked him but also severely assaulted him with a knife. On receiving injuries Keshav Kumar could walk a few steps and fell down in a Nali. Just a little latter Keshav Kumar expired near Khazanchi Hotel. This hotel is at a very short distance from the verandah in which the deceased was assaulted.

4. Police Station Bhognipur is 2 miles from Pukhrayan. Prahlad Kumar wrote a report of the occurrence at his house and went to the police station along with Ramesh Chandra Dubey DW 1 and lodged the report at 9.15 P.M.

5. Sri Kushal Chand Tripathi, S. I. Incharge Police Station immediately entered upon investigation. He reached the scene of occurrence at 9.45 P.M. He found dead body of Keshav Kumar lying on a bench in front of the house of Prahlad Kumar. He held inquest on the dead body and handed it over to Aley Hasan constable (PW 10) at 11.30 P.M. for postmortem examination. Then he interrogated the witnesses between 0.50 hours and 5-45 A.M. of 15-11-1977. Then he inspected the site and prepared site plan Ex. Ka. 13.

6. On 15-11-1977 at 2.30 P. M. Dr. K.C. Mathur (PW 5) Medical Officer, K P. M. Hospital Kanpur, conducted postmortem examination on the dead body of Keshav Kumar. He was aged about 20 years. Eight antemortem injuries indicated hereunder were found:(Injuries discussed-Ed.)

7. The Appellant did not admit to have assaulted Keshav Kumar as alleged and for the reason assigned by the prosecution.

8. The prosecution examined Prahlad Kumar Goel, Chhotey Lal and Raju and PW 1 and 3 as eye witnesses of the occurrence. The prosecution further examined Ram Singh (PW 6) in whose presence at Anil Singh Appellant made an extra judicial confession. On the other side the Appellant examined Ramesh Chandra Dubey, Karan Singh (Baxi Town Area), Balak Das, father of Raju (PW 3) and Sheo Prasad Misra, a draftsman. On an appraisal of the evidence of the witnesses examined on both the sides the learned Sessions Judge, non-Metropolitan Area, Kanpur found the case of the prosecution proved and, therefore, convicted the Appellant.

9. We have heard the learned Counsel for the Appellant, the State and the complainant's counsel at length and gone through the entire record with their assistance. The Appellant's counsel has not challenged the place of occurrence. The investigating officer found blood in the verandah of occurrence. The Appellant's counsel has also not challenged the time of occurrence. He has, however, contended that the 3 eye-witnesses had not seen the occurrence.

10. The learned Counsel for the complainant urged that the antemortem injuries indicated that there was struggle between the deceased and the assailant, that, therefore, the assailant would have taken some time in causing 8 injuries and that in this gap of time Prahlad Kumar, who was in the Mela, could, on receiving

information of the assault on his brother, come up and see atleast a part of the occurrence. His contention was that Prahlad Kumar must have seen the occurrence. He further contended that the testimony of Raju (PW 3), aged about 11 years, could also be relied upon. Notwithstanding the fact that he was not named as a witness of the occurrence in the first information report and the statement of Prahlad Kumar. He frankly conceded that if Prahlad Kumar and Raju could not be believed, the testimony of Chhotey Lal could not be made basis of the conviction of the Appellant.

11. Chhotey Lal (PW 2) is resident of village Astia. On the date of occurrence he had come to Pukhrayan market to purchase iron steel for door shutters along with Baijnath and Munna Maharaj alias Devi Charan. Chhotey Lal purchased nails etc. Baijnath purchased Urea. Munna Maharaj purchased some vegetables. After having made purchases these 3 persons left the market at the time of sun set. His village is 2 miles from Pukhrayan. In the way some 4-5 boys told Munna Maharaj that a Mela was being held in the Normal School. Therefore, these 3 persons decided to visit the Mela. Consequently they proceeded from the market at about 7-30 or 8 p. m. towards the Normal School. When they reached the hotel of Khazanchi, they saw the Appellant assaulting Keshav Kumar in the verandah of Dr. Daya Shanker Dwivedi. In their seeing Anil Singh gave 7-8 knife blows to Keshav Kumar. Then they saw Keshav Kumar running from the verandah. Anil Singh then gave the knife blow at his back. Consequently, Keshav Kumar fell down in the Nali.

12. It is evident that Chhotey Lal is just a chance witness. He had not left his village to see the Mela. Another fact which is conspicuous in his statement is that he and his 2 companions left the market at the time of sun set for their village. In the middle of November the time of setting in of the sun is about 5.30 P. M. There is dusk for about 45 minutes. Thus it appears that these 3 persons left the market, if not at about 5.30 P. M. then atleast at about 6.15 P. M. They could easily cover a distance of 2 miles in an hour's time. Therefore, by 7.15 P. M. they could have easily reached their village. In this circumstances it does not stand to reason that they left the market at 7.30 or 7.45 P. M. From this aspect of the matter the version given by Chhotey Lal about his presence at the time of occurrence is not free from doubt.

13. In this connection it is important to notice that on 14-5-1975 the police submitted a challani report u/s 107 Code of Criminal Procedure against the Appellants and one Ganesh Kumar for quarrelling with Jageshwar Prasad. In this report Chhotey Lal and Devi Charan alias Munna Maharaj both were cited as witnesses. About a fortnight later on 28-5-1975 Anil Singh Appellant filed a complaint under Sections 323 and 504 IPC against Jageshwar Prasad, Prahlad Kumar and one Dhruv. It is thus apparent that from May 1975 the relations between the Appellant and the family of Jageshwar Prasad were strained and that Chhotey Lal and Devi Charan were in favour of Jageshwar Prasad and against the Appellant.

14. Prahlad Kumar has stated that after the Mela a Natak (drama) was going to take place. He was one of those who were arranging the functions. He was standing near the stage in front of the chairs meant for guests. SDM and Tehsildar were on the chairs meant for guests. At that place he heard that his brother Keshav Kumar was being assaulted. Then he immediately ran and saw the Appellant assaulting his brother. Prahlad Kumar has stated that he was at 25 steps from the place of occurrence when he was told about the assault. It is true that if Prahlad Kumar was told about the assault near the stage meant for the drama he could come near the place of occurrence in very little time and see a part of the assault.

15. But there are certain broad features appearing on the record which indicate that Prahlad Kumar and Chhotey Lal had not seen the occurrence. These circumstances may be given one by one:

(1) Prahlad Kumar has clearly stated that he was informed by some one that his brother was being assaulted. He has not disclosed the name of that person. Therefore, it appears doubtful that he was informed of the assault when he was near the stage.

(2) It is evident from the statement of Prahlad Kumar that some person had seen the assault first and then that person informed Prahlad Kumar. It is thus evident that the best evidence in the case is of that person who had initially seen the assault on the deceased. The prosecution has not examined that person. In other words the prosecution has withheld the best evidence.

(3) Chhotey Lal and Devi Charan, as stated above, were in favour of Jageshwar Prasad. On information given by some boys they decided to visit the Mela. They must be knowing that the Sub-Divisional Magistrate and Tehsildar would be in the Mela but none of them immediately went into the Mela to inform these officers.

(4) It is evident from the statement of Ramesh Chandra Dubey (DW 1) and Prahlad Kumar. (PW 1) that the Sub-Divisional Magistrate, on getting the information of the occurrence and closing the function of the drama, came near the hotel of Khazanchi where Keshav Kumar was lying dead. Thereafter the dead body was taken to his house. The Sub-Divisional Magistrate and Tehsildar both went along with the dead body upto his house. Prahlad Kumar did not tell of the occurrence or of the assailant's name to the Sub-Divisional Magistrate and Tehsildar. He did not even ask the Sub-Divisional Magistrate to call the police and get the Appellant arrested. Chhotey Lal was asked whether the Deputy Collector, Tehsildar or Station Officer had come to the place of occurrence. He replied that he did not see any person in uniform and that he did not recognise the Deputy Collector or Tehsildar. He was further questioned that if any officer enquired from him about the occurrence. He replied in the negative. This statement shows that he was not present at the time of occurrence. The Sub-Divisional Magistrate is in charge of a Sub-Division and has to maintain law and order. The police

ordinarily acts under his directions. In these circumstances, had Prahlad Kumar seen the occurrence and the assailant he should have immediately made a complaint to the Sub-Divisional Magistrate who came up soon after the occurrence. The silence of Prahlad Kumar in this respect is clearly indicative of the fact the he had neither seen any part of the occurrence nor he had seen the assailant.

16. The position that easily follows is that the prosecution has not produced the best evidence and has examined Prahlad Kumar and Chhotey Lal, who had actually not seen the assailant. Therefore, reliance cannot be placed on the testimony of Prahlad Kumar and Chhotey Lal.

17. We next consider the presence of Raju and the worth of his evidence. He is a boy of 11 years. As stated above his name does not find place as a witness of the occurrence in the first information report as well as in the statement on oath of Prahlad Kumar. It is in the evidence of Kushal Chand Tripathi, Investigating Officer that after having held inquest he generally questioned the people including boys, who had gathered there as to which of them had seen the occurrence. At that time Raju gave out that he had seen the occurrence. In this way Raju was made an eye-witness of the occurrence by the Investigating Officer.

18 Raju has stated that he had kept a Chat Stall in the Mela, that he ran the stall upto 7 p. m., that he closed his shop at 7.30 p. m. and brought his Thela to his house, that then from his house he went in the Mela to see drama. There were some chairs at his shop. He kept those chairs at the place of the drama in 10-15 minutes. Then he sat on a chabutra by the side of the stage along with his friends with a view to see the drama. Before the drama actually commenced he proceeded to his house at about 8 p. m. He reached near hotel of Khazanchi and saw a crowd there. Then he saw the Appellant giving abuses and assaulting Keshav Kumar. In his seeing the Appellant gave 2-3 knife blows to Keshav Kumar. Raju, on account of fear, ran away to his house. At about 8.15 a. m. it was learnt that Keshav Kumar died. Therefore, he along with his parents and brother went to the house of Keshav Kumar to see his dead body.

19. He has assigned a specific reason for his leaving the Mela area without seeing the drama despite the fact that he had gone there from his house with the positive intention of seeing the drama. He has stated that his elder brother had told him to come up early and that on account of fear of being beaten by his brother he left the Chabutra and proceeded towards his house. It will be noticed that he had left the Mela area with his Thela at about 7.30 p. m. It is thereafter that he again returned to the Mela area. He took 10-15 minutes in shifting the chairs from the place of his shop to the dais of the drama. It is evident that just 15 minutes later he left the Mela area. Assuming for a moment that his brother had told him to come early it did not mean that he should return to the house within less than half an hour. Moreover, he did not tell the investigating officer that he left the Mela area so soon on account of the fear of his brother. We are, therefore, of the opinion that Raju has not given a reasonable explanation of his

leaving the Mela area within about 15 minutes of his keeping the chairs near the place of drama. Therefore, his presence at the time of assault cannot be believed.

20. It is further evident from his statement that he found a crowd near the hotel of Khazanchi. It means that quite a large number of persons had seen the occurrence. But the prosecution has not examined any such person who had seen the assault from its inception. We have again to observe that the prosecution has withheld the best evidence in the case.

21. The result of our discussion is that Keshav Kumar was not seen by any of the three prosecution witnesses examined in the case.

22. In view of this, it is unnecessary to deal with the evidence of the defence witnesses. Suffice it to say that Ramesh Chandra, Karan Singh and Shiv Prasad Misra (D Ws 1 to 3) have deposed that the occurrence was not seen by Prahlad Kumas and Raju.

23. The Appellant's counsel pointed out that in fact that first information report was not lodged at 9.15 P. M, because if it were a fact the crime number should have been mentioned on the inquest report and other papers prepared on 14-11-1977 by the investigating officer. The crime number has been mentioned on the papers which were prepared on the next day i. e. 15-11-1977. There is no particular rule which requires crime number to be written on the inquest report or other papers but the writing of crime number etc. is necessary to distinguish the papers of one crime from another. It has usually been noticed that the investigating officers do write crime number etc. on each and every paper prepared during investigation. Kushal Chand Tripathi investigating officer explained the omission by saying that by mistake crime number etc. was not written on the panchayatnama and papers relating to it. He also stated that by mistake he did not even mention the time of commencement of holding the inquest. In the inquest report the investigating officer has clearly mentioned in the appropriate column that the first information report was lodged at 9.15 P.M. The inquest report was attested by Ramesh Chand (P W 1). He admitted that at the time he signed on the inquest report the time of lodging the first information report was mentioned therein as 9.15 P. M. In view of his statement we are of the opinion that the first information report in the present case was lodged at 9.15 P. M. However, we would like to observe that the investigating officers should mention crime number and its particulars on the papers prepared during investigation otherwise papers of one case can be mixed of with the papers of another case.

24. For the findings arrived at above the conviction of the Appellant recorded by the learned Sessions Judge cannot be sustained and deserves to be set aside.

25. The appeal is accordingly accepted and conviction and sentence of the Appellant u/s 302 IPC recorded by the Sessions Judge are set aside. The Appellant is acquitted of the charge levelled against him. He is on bail to which he need not surrender. His bail bonds are discharged.