

(2005) 12 AHC CK 0087
In the Allahabad High Court
Case No : Criminal Appeal No. 2344 of 1981

Babu Singh, Khem Karan and Chob Singh and Laik Singh	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 07-12-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 325, 34

Citation : (2005) 12 AHC CK 0087

Hon'ble Judges : M.C. Jain, J;M. Chaudhary, J

Bench : Division Bench

Advocate : P.C. Sharma and Sudhir Kumar, for the Appellant; K.P. Shukla and A.G.A., for the Respondent

Judgement

M. Chaudhary, J.—This criminal appeal has been filed by the accused appellants from judgment and order dated 5th of October, 1981 passed by II Additional Sessions Judge, Etah in Sessions trial No. 92 of 1980 State v. Babu Singh and Ors. thereby convicting accused Babu Singh under Sections 302 and 325 IPC and u/s 307 read with 34 IPC and sentencing him to imprisonment for life, 3 years" and 7 years" rigorous imprisonment respectively thereunder. Accused Khem Karan was convicted u/s 302 and 325 IPC each read with Section 34 IPC and Section 307 IPC and sentenced to imprisonment for life, 3 years" and 7 years" rigorous imprisonment respectively thereunder. Accused Chob Singh and Laiq Singh were convicted u/s 302, 307 and 325 each read with 34 IPC and sentenced to imprisonment for life, 7 years" and 3 years" rigorous imprisonment respectively thereunder.

2. Since accused respondents Khem Karan and Chob Singh were reported having died their appeal stood abated vide order dated 29th of July, 2005.

3. Brief facts giving rise to this appeal in nutshell are that Babu Singh, Khem Karan and Chob Singh are real brothers and accused Laiq Singh is their nephew residing in village Khangarpur, police station Nidhaulikalan, District Etah. The village is mainly inhabited by Lodha Rajputs, and there are only four houses of

Faquirs. Accused Chob Singh, Babu Singh and Khem Karan are persons of criminal mentality as some five years ago they kidnapped the daughter of Tikam and some four years ago they kidnapped the daughter of one Bhupal. Thereafter they committed theft at the house of Ganga Singh, Shyamlal and Raghubar and thereafter they also beat Badan Singh and his son. The co-villagers were much perplexed due to their activities and wanted that they should leave the village and Hamid Khan was one of them. Therefore, Babu Singh and his associates were nursing grudge against Hamid Khan. Some four days prior to the occurrence Hamid Khan had gone to village Kheria within the limit of police station Jasrana to see his in-laws, and his wife Smt. Hasina alongwith her mother-in-law Munis @ Muniran and Devar Saleem aged about six years were present in the house. At about 10:00 a.m. on 24th of September, 1979 Smt. Muniran alongwith her younger son Saleem was asleep upon the cot in her chhappar and Smt Hasina was sitting near her and the Dibbi was lighted there that Babu Singh and his brothers Khem Karan and Chob Singh armed with guns and their nephew Laiq Singh with half gun reached there and Babu Singh fired at Muniran hitting her at her chest and also causing firearm injury to Saleem who was asleep putting his hand on the chest of his mother. Khem Karan also aimed his gun at Smt Hasina who raising hue and cry caught the barrel thereof lowering the same but the shot fired by Khem Karan hit at her left thigh. On hearing the hue and cry and sound of shots Tursi Ram and Mohd Ali residing in the neighborhood reached the scene of occurrence and saw the miscreants running away from the chhappar of the victims. Smt. Zinna who happened to be the sister of Smt Muniran, the deceased got awake and also witnessed the occurrence. Next morning injured Smt Hasina got report of the occurrence scribed by one Than Singh and taking her injured Devar went alongwith Mohammadin in a buffalo cart to the police station Nidhaulikalan situate at a distance of two miles from village Khangarpur and handed over written report to the police there. The police registered a crime on the basis of written report handed over by Smt Hasina and made entry regarding registration of the crime in GD. Investigation of the crime was entrusted to SI Nanak Chand who recorded statements of the witnesses at the police station itself and sent both the injured Smt Hasina and Saleem to the Primary Health Centre, Nidhaulikalan for their medical examination. Smt Hasina and Saleem were medically examined by Dr R.K. Gupta, Medical Officer-in-charge PHC, Nidhaulikalan at 8:00 a.m. and 8:30 a.m. respectively.

4. Medical examination of Smt Hasina revealed below noted injuries on her person:

Lacerated firearm wound of entry 2.5 cm x 3.5 cm 3 cm on medial side of left thigh 26 cm above the knee joint with margins inverted and blackening present. Gun powder burn present in an area of 8 cm x 6 cm around the wound. Direction from the front and clotted blood present. On cleaning blood started oozing.

Her medical examination also revealed contusion in area of 6 cm x 6 cm on back

of left thigh upper part 24 cm above the popliteal fossa. Colour reddish blue. Pellets not palpable in contused area.

The doctor opined that the injury was caused by firearm and about V2 day old in duration. The injury was kept under observation. X-ray of left thigh was advised.

5. Medical examination of injured Saleem revealed below noted injuries on his person:

1. Lacerated wound 4 cm x 1 cm x skin deep on lateral side of left index finger. Wound is on the whole length of finger. Blackening present around the wound. Bleeding present on cleaning of wound.

2. Lacerated wound 1.5 cm x 1.5 cm on left little finger. There is complete amputation of middle and distal phalynx. Only proximal phalynx remained on the top of which wound is present. Margins lacerated and blackening and charring present. Bleeding present.

The doctor opined that both the injuries were caused by firearm and almost half a day old in duration. Injury No. 1 was simple and injury No. 2 grievous.

X-ray of left thigh of Smt. Hasina revealed six radio opaque metallic shadows in left thigh.

6. After recording statements of witnesses Smt Hasina and Mohammadin the investigating officer went to the place of occurrence and drew inquest proceedings on the dead body of Smt Muniran. He prepared the inquest report (Ext ka 9) and other necessary papers (Exts Ka 10 & Ka 13) and handed over the dead body in a sealed cover alongwith necessary papers to constables Satyavir Singh and Sunehari Lal for being taken for its post mortem. He also recorded statements of other witnesses. Then he inspected Dibbi lit in the chhapar at the time of the occurrence and prepared its memo (Ext ka 14). Then he collected bloodstained and simple earth from the scene of occurrence and prepared its memo (Ext ka 16). He also inspected the site and prepared its site plan map (Ext ka 18).

7. Autopsy on the dead body of Smt Muniran conducted by Dr. P.K. Jain, Medical Officer District Hospital, Etah on 25th of September, 1971 at 5:15 p.m. revealed below noted ante mortem injuries:

Firearm wound of entry 2 cm x 2 cm x chest cavity deep below right clavicle 3 cm lateral to midline. No blackening was found present. Direction backwards obliquely downwards right to left.

On internal examination 2nd rib on right side was grossly fractured. Left lung and upper lobes of right lung grossly lacerated and both the pleurae grossly lacerated. The doctor removed one wad and 10 pellets from right pleural cavity and 2 wads and 18 pellets from left cavity. Heart and peritoneum were grossly lacerated and doctor removed 5 pellets from pericardium. Stomach contained 4 oz of digested food. Small and large intestine both were half full.

The doctor opined that the death was caused due to shock and hemorrhage as a result of ante mortem injury about 18 hours ago.

8. After completing the investigation the police submitted charge sheet against the accused accordingly (Ext ka 19).

9. After framing of charge against the accused the prosecution examined Smt Hasina (PW1), Smt. Zina (PW 2), Mohamnradin (Pw 3), Tursi Ram (PW4) and Saleem (PW7) as eye witnesses of the occurrence. Out of these five witnesses Saleem being a little child was discharged as he could not understand the nature of questions put up to him. PW2 Smt Zina and PW3 Mohammadin did not support the prosecution case as both of them stated that on hearing hue and cry and sound of shots fired they woke up but they did not see any of the miscreants running away from the scene of occurrence. PW1 Smt Hasina narrated all the facts of the occurrence from the beginning to the end as stated above. PW4 Tursi Ram corroborated her stating likewise on all material points. PW5 HC Ram Singh who prepared check report on the basis of written report handed over by Smt Hasina at the police station and made entry regarding registration of the crime in GD has proved these papers (Ext ka 2 and ka 3). He also proved special report sent to higher authorities at 7:45 a.m. that very morning. PW6 Constable Sunehri Lal to whom dead body in a sealed cover alongwith necessary papers was handed over for being taken for its post mortem stated the said fact. PW8 Dr P.K. Jain who conducted autopsy on the dead body of Smt Muniran proved the post mortem report (Ext Ka 5). PW9 Dr R.K. Gupta, Medical Officer who examined both the injured namely Smt. Hasina and Saleem proved the injury reports (Ext Ka 6 & ka 7). PW10 Jafar Husain, X-ray Technician District Hospital Etah has proved x-ray plate and the x-ray report (Ext Ka 8). PW11 SI Nanak Chand who investigated the crime and after completing investigation submitted charge sheet against the accused has proved the police papers.

10. The accused denied the alleged occurrence altogether stating that they were implicated in the case falsely on account of enmity. They did not adduce any evidence in their defence.

11. On an appraisal of the evidence and other material on record the learned Additional Sessions Judge held the accused guilty of the charge levelled against them and convicted and sentenced them as stated above.

12. Feeling aggrieved by the impugned judgment and order the accused preferred this appeal for redress.

13. We have heard Sri Sudhir Kumar, learned counsel for accused appellants Babu Singh and Laiq Singh and the learned AGA for the State respondent and gone through the record.

14. Now we shall see if the arguments advanced by the appellants" learned counsel have got any force in them:

First, it has been vehemently argued by the appellants" learned counsel that

since the occurrence took place at some dark hour in the night, none could see the incident of firing and the FIR was lodged next day after due consultation and confabulation. PW1 Smt Hasina, daughter-in-law of the deceased stated in her examination-in-chief that at about 10:00 p.m. the alleged night her mother-in-law Muniran was asleep on a cot in the chappar and her Devar aged about six years was also sleeping by her side keeping his left hand on her chest and she was sitting on the cot lying beside the cot of her mother-in-law; that a kerosene Dibbi was lighted in the nitch in the wall near the door of kotha diffusing sufficient light; that Babu Singh, Khem Karan and Chob Singh armed with guns and Laiq Singh with half gun reached there and Babu Singh fired at her mother-in-law hitting her at her chest and also causing injuries at the fingers of Saleem; that in the meanwhile accused Khem Karan also aimed his gun towards her but she got barrel of the gun leaned downwards but he fired hitting her at her thigh and on hearing the hue and cry raised by Smt. Zina, sister of the deceased and her husband Mohammadin and one Tursi Ram rushed to the scene of occurrence who saw the assailants running away from the house and that sustaining fatal injuries Smt Muniran died on the spot instantaneously. She further stated that since her husband Hamid had gone to see his in-laws and she was all alone in the house she could not go to the police station soon after the incident because of fear and that the following morning she got report of the occurrence scribed by one Than Singh who after scribing the same read over the report to her and then she affixed her thumb impressions thereon and taking injured Saleem and her Mausiya Sasur Mohammadin went to the police station Nidhaulikalan and handed over written report of the occurrence to the police there and then she and injured Saleem were sent to the Primary Health Centre Nidhaulikalan for their medical examination and x-ray of her thigh was got done in the District Hospital, Etah. She was subjected to searching and gruelling cross-examination but nothing could be elicited therefrom advantageous to the accused or to shake her credibility. She has given such a " graphic description of the occurrence and stood her cross-examination so firmly that it leaves no room for doubting her testimony. She appears to be a truthful and straightforward witness and her statement is quite impressive and emphatic. Her testimony stands further corroborated by the testimony of PW4 Tursi Ram who resides in her close neighbourhood. PW4 Tursi Ram stated that the alleged night he was sleeping at his chaupal situate at a distance of some twenty paces from the house of Hamid; that at about 10:00 p.m. he heard the sound of shots fired and immediately ran towards the house of Hamid and saw accused Babu Singh, Khem Karan, Laik Singh and Chob Singh running away from the house of Hamid and that at that time Khem Karam, Chob Singh and Babu Singh were armed with guns and Laiq Singh with half gun and that thereafter he saw that Muniran was lying dead on the cot and Hasina was lying injured and Saleem had also received injuries at his fingers. He also stated that a Dibbi was lighted there. He was subjected to searching and rambling cross-examination but nothing tangible could be brought on the record to shake his credibility.

Medical examination has lent support to the ocular testimony of these two eye witnesses so clinchingly and vividly that we can not escape from the conclusion drawn by the learned trial judge. Statement of PW 1 Smt. Hasina regarding injuries caused to the deceased, distance from which the shots were fired by the accused at her and the deceased stands corroborated by medical evidence such as presence of blackening around the injuries sustained by Saleem, absence of blackening around the ante mortem firearm injuries sustained by the deceased and presence of blackening around the firearm injuries sustained by her etc. Statement of PW7 Dr. R.K. Gupta that the deceased would have taken food 2-3 hours before her death as her stomach contained 4 oz of digested food has lent support to the time of occurrence as 10:00 p.m. stated by all the eye witnesses.

Secondly, learned counsel for the accused laid much emphasis that Smt Hasina did not know the scribe and it appears that report was scribed by the co-villagers after due consultation and confabulation and her thumb 4 impressions were got affixed thereon. PW1 Smt Hasina categorically stated that following morning she got the report scribed by one Than Singh as he had come to some of his relatives in the village and to her house at about 5:00 a.m.; that few co-villagers were also present at her house; that then she got the report scribed by him on her dictation which was read over to her after being scribed and then she put her thumb impressions thereon and that then she taking her injured Devar went to the police station with her Mausiya sasur Mohammadin on a Bhainsa Gari and handed over written report of the occurrence to the police there. A perusal of the written report of the occurrence goes to show that complete address of Than Singh was written at the bottom of the report. A perusal of the written report goes to show that it is quite natural and spontaneous and that since actual incident of firing was witnessed by Smt Hasina alone then how the FIR could be scribed by the co-villagers. Otherwise too, the fact that she withstood her cross-examination firmly and above facts completely rule out the plea that the FIR was lodged after due consultation and confabulation.

Thirdly, great emphasis has been laid by the learned counsel for the accused appellants that since both eye witnesses are interested and partisan witnesses, no reliance should be placed on their testimony. No doubt, PW1 Smt Hasina is the daughter-in-law of the deceased and PW4 Tursi Ram is also a partisan witness but their sworn testimony could not be discarded or thrown over board merely because one of them is a relative witness and another is a partisan witness as according to PW4 Tursi Ram accused Laiq Singh had kidnapped the daughter of his cousin Tikam Singh and she was not traceable till then. On close scrutiny their testimony is found to be above reproach of suspicion. There is apparently no reason for doubting their sworn testimony nor the trial court which had an opportunity to watch the demeanour of these two witnesses castigated their testimony in any manner. Moreover, if the witness is related to the deceased it would add to the value of his or her testimony if found reliable because he or she would naturally be interested in ensuring that real culprits are punished and not screened.

Lastly, it has also been argued by the appellants' learned counsel that the accused had no motive to commit the murder of the elderly lady as they had animus with her son Hamid and not with her. In the case of direct evidence like the present one the motive pales into insignificance. However, we are of the view that the accused appellants committed the murder of Smt. Muniran, the elderly lady with a view to overawe and terrorize the villagers and to compel Hamid to leave the village because admittedly Hamid alongwith his companions used to chalk out plans to harm them so that they might leave the village as they were ruffians and used to commit the offences such as abduction, theft etc. They might have guessed that till Smt Muniran, mother of Hamid was alive he may not leave the village as his mother would not like to leave the village because her sister Smt Zina used to reside in her close neighbourhood and otherwise too, elderly persons do not like to leave their old and cherished house. Thus, they thought to liquidate the elderly lady in absence of her son Hamid thinking that after her murder feeling terrorized and detached from that place he would leave the village and then they would be free to live there according to their wishes. And they succeeded in their mission. As it has come in evidence that after the occurrence Hamid sold his house and left the village and he alongwith his family shifted to Firozabad.

15. Thus, on a global consideration of the evidence and concomitant circumstances, we endorse the impugned judgment rendered by the court below regarding accused Babu Singh who has been held guilty of the offence punishable u/s 302 and 325 IPC. We are unable to find that he shared common intention with Khem Karan who fired at Smt Hasina thereby causing firearm injuries to her. Since no overt act has been assigned to accused Laiq Singh who happens to be the son of their cousin Hetram he is given benefit of doubt and therefore entitled to acquittal.

16. The appeal is allowed in part setting aside the conviction of accused Laiq Singh. Singh is hereby acquitted of the charge levelled against him. He is on bail. His bail bonds are hereby discharged. Since accused appellants Khem Karan and Chob Singh were reported having died their appeal stood abated. Conviction of accused Babu Singh under Sections 302 and 325 IPC and sentences awarded to him to undergo imprisonment for life and three years" rigorous imprisonment respectively thereunder are affirmed. Both the sentences shall run concurrently. Accused Babu Singh is on bail. Chief Judicial Magistrate, Etah shall get him arrested and lodged in the jail to serve out the sentences imposed upon him.

17. Let the judgment be certified to the court below. Record of the case be transmitted to the court concerned immediately for necessary compliance under intimation to this court within two months.