
(2004) 07 AHC CK 0182
In the Allahabad High Court
Case No : Criminal Appeal No. 1879 of 1981

Badshah and Others (in Jail)	Vs	APPELLANT
The State of U.P.		RESPONDENT

Date of Decision : 05-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 364

Citation : (2005) CriLJ 346

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : Prem Prakash, P.M.N. Singh, P.S. Yadav, N.P. Midha, K.R. Singh and Devendra Swarup, for the Appellant; V.S. Singh, A.G. and A.M.S. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—A First Information Report for the offence of abduction in order to commit murder of the Kidnappee- Suraj Pal son of Jagan Lal was lodged by his brother Pahalwan Singh (PW1), In the afternoon of 24-5-1980 at 5.15 p.m. at Police Station Kuraoli, District Mainpuri. This F. I. R. named all the 8 accused persons i.e. (1) Badshah S/o Lakhan Singh, (2) Suraj Pal S/o Lakhan Singh, (3) Mulaim Singh S/o Kunji Lal, (4) Rakesh Pal S/o Kunji Lal, (5) Rameshwar S/o Hanshraj, (6) Buddu S/o Tika Ram, (7) Achche Lal S/o Buddu all residents of Village Kheria and (8) Dhara Singh S/o Hori Singh, resident of Salempur. It is disclosed in the FIR that the 8 accused persons in the night hours of 23-5-1980 at about 10.00 P. M. all armed with guns reached at the tube well of the complainant located in the western side of the village and caught hold of his brother Suraj Pal who was sleeping there along with PW-2 Puttu Lal, PW-3 Ram Pal, Sumer Singh, Bhumipal Singh, and Khetal Singh. The witnesses Puttu Lal, Ram Pal and others who were present there questioned the propriety of the accused persons in bodily lifting kidnappee Suraj Pal and when they tried to get

him released from their custody, the accused retorted and fired creating panic among the witnesses. As such, the witnesses and the persons present on the spot could not succeed in getting the kidnappee released from their illegal custody. The complainant when reached the scene of occurrence after having heard the hue and cry and also the booming sound of gun, the entire story was detailed to him by the witnesses. He apprehending dangers to his brother's life at the hands of accused persons started searching for him with other family members and when he finally could not succeed he reported the matter next day (24-5-1980) at 5.15 p.m. at the Police Station.

2. It has further come in the evidence that accused No. 1 to 7 are from the same family whereas accused No. 8 Dhara Singh happens to be a close friend of accused Badshah. The accused Mulaim Singh prior to the incident had filed a criminal complaint against the kidnappee Suraj Pal and 37 others including the complainant. In that criminal case accused Rameshwar and Badshah were witnesses for the complainant. Besides this, the father of accused Badshah namely Lakhan Singh had also filed a litigation against the kidnappee Suraj Pal and others in respect of demolition of Nali. Both the cases had ended in favour of the kidnappee, the complainant (PW1) and his family members prior to the incident. Since then the accused became more inimical against Suraj Pal and his family members. The accused persons had become sore against the kidnappee and his family members right since Suraj Pal got a tube well installed in his field.

3. On lodging of the F. I. R. at the Police Station by the complainant - Pahalwan Singh (PW1), the case was registered by Constable Deep Singh who gave its due information to the Investigating Officer, Raghavram Mishra (PW4). After recording the statement of Constable Deep Singh, the Investigating Officer along with Station House Officer of Police Station Kuraoli, reached the place of occurrence and recorded the statements of the witnesses. He prepared the site plan of the place of incident (Ext. Ka-11) and made further inquiries from other people in the village. PW4 made hectic search for the accused and the kidnappee on 25-5-1980 and 10-6-1980 but they could not be arrested. Thereafter, he gave a report to the Magistrate concerned about the accused having absconded and obtained their warrant of arrest and processes u/s 82 and 83 of Cr. P. C. On 28-6-1980 the Investigating Officer arrested the accused appellant Mulaim Singh but the other accused could not be apprehended. Later on, remaining accused were found to have surrendered before the Court concerned. Before the completion of the investigation, when PW 4 was transferred from that Police Station it was taken over by S. I. Jawahar Lal, who after completing the entire investigation, submitted the charge sheet dated 8-8-1980 (Ext. Ka-8) in the Court concerned.

4. The case was committed for trial to the Court of Session by the Magistrate concerned and after its registration on 6-2-1981, the case was transferred to the Court of VII Addl. Sessions Judge, Mainpuri where the charges for the offence punishable u/s 364 I. P. C. were framed against all the aforesaid 8 accused

persons and their trial commenced. The accused pleaded their innocence to the charges and disputed the allegation of the prosecution made against them.

The prosecution in support of the case examined PW1- Pahalwan Singh, the complainant, PW 2- Puttu Lal, PW-3-Ram Pal, the later two being the eyewitnesses of the incident and PW-4-Investigating Officer. Two other witnesses namely S. P. Singh (CW1), a Junior Engineer of the Sub-Divisional Office Electricity Department, Mainpuri and B. B. Tiwari (CW2) Junior Engineer, Electricity Sub-Station, Kuraoli District Mainpuri, were also examined at the instance of the Court.

The accused persons in their statements recorded u/s 313 of Cr. P. C. have denied all the allegations made against them and further stated that they had been falsely implicated on account of enmity. The accused persons have however, admitted this fact in their statements that the kidnaped Suraj Pal Singh is not available in the village and have further stated that he is absconding along with his gun.

The learned Addl. Sessions Judge after having heard the parties and on consideration of the material available on record, found that the guilt for the offence punishable u/s 364 I. P. C. was fully established beyond doubt against the accused Nos. 1 to 5 and 7 & 8 but he found that the guilt for the aforesaid offence for which the accused No. 6 Buddu was charged, had not been established on record beyond doubt. Learned Trial Judge accordingly, gave the benefit of doubt to the accused-Buddu and acquitted him for the said offence whereas he recorded order of conviction against 7 accused persons and sentenced them to undergo rigorous imprisonment for a period of 7 years each.

5. Aggrieved with the aforesaid order of conviction and sentence passed against them, those seven accused have come up in this appeal. During the pendency of the appeal, the appellant No. 5-Rameshwar S/o Hanshraj reportedly expired and an order dated 3-3-2004 has been passed by the Court for the" appeal having abated in respect of the said accused appellant. Now the appeal of only 6 appellants remains to be disposed of by this order.

6. Whether the prosecution has succeeded in proving the guilt for the offence punishable u/s 364 I. P. C. against the accused appellants by the evidence led by it before the Trial Court, is a question which requires answer in this appeal. Thus, in order to obtain a correct reply, the assessment of the oral evidence given by the witnesses has to be made by the Court. The learned Trial Judge has made his own assessment and has reached the conclusion that the offence with which the appellants were charged stood fully proved against them. However, this being a Court of appeal against the aforesaid judgment of the Court below, has to again test the veracity and acceptability of the evidence of the prosecution while deciding the present matter.

7. I have gone through the entire evidence led by the prosecution and it is found that PW2 Puttu Lal and PW3 Ram Pal have given ocular account of the incident of

kidnapping of complainant's brother Suraj Pal. It is with full consistence that these two eyewitnesses have succeeded to bring out the fact before the Court that on the fateful night of 23-5-1980, they were present nearby the tube well of the kidnappee Suraj Pal when the incident took place at about 10.00 P. M. They along with some other persons who have not been examined as witnesses, had gone there to sleep in the night for the purposes to have watch over their harvested crop kept nearby for threshing purposes. Threshing of the crop was to be done with the help of the electric motor installed at the tube well of kidnappee-Suraj Pal. During the investigation when the Investigating Officer-Raghvram Mishra (PW4) visited the spot on 24-5-1980, he after inspection of the place of occurrence has prepared a site plan (Ext. Ka-11) showing the places where Puttu Lal, Ram Pal and some other persons who are duly named by these witnesses claimed to be sleeping at the time of incident nearby the tube well. He has also shown the places where the harvested crop belonging to all these witnesses had been kept for threshing. Obviously, if the crop, which was harvested in the previous evening, was kept near the tube well, its safety had to be ensured by its owners and for that purpose if PW2 and PW3 along with others was present there at the tube-well of the kidnappee, their presence on the spot is wholly natural and undisputable. PW-2 Puttu Lal has given a very natural account of the whole incident and has narrated a consistent version of the prosecution case as appearing in the F. I. R. as well as with what has been stated by the Co-witness PW-3 Ram Pal. This Puttu Lal has been subjected to a very lengthy cross-examination by the defence but nothing could be elicited from out of his entire deposition as to make a dent in the truthfulness and veracity of the account which he has given before the Trial Court. Nothing has come out from his cross examination to indicate that he is an interested witness or has one or the other animus against the accused persons as to implicate them falsely in such a case of kidnapping. PW-2 thus, appears to be a wholly truthful independent witness and mere presence of one or two minor variations in his statement from what he deposed before the Investigating Officer u/s 161 of Cr. P. C. cannot be taken to have made any dent in the veracity and acceptability of his evidence.

8. The other witness of fact namely Ram Pal (PW3) has though admitted in his cross-examination that the appellant accused Mulaim Singh had filed a criminal complaint against as many as 37 accused in which he and his two brothers were also implicated, but this admission on the part of PW3 will not render the whole evidence given by him as unreliable and unacceptable. The truthfulness of the statement of the witness has to be tested on the anvil of the principles which have been enunciated by the Courts of the precedents. It is a settled view that the evidence, given by witnesses who might be sore against the accused persons, cannot be outrightly rejected. The truthfulness has to be tested from the whole material available on the record of the case. PW3 is also a person who had gone at the tube well of the kidnappee to have a night watch over his harvested crop kept there. At no place in his cross-examination, it has been challenged by the defence that he was not present there at the scene or his

harvested crop was not kept at the tube well of the kidnappee-Suraj Pal. The statement of this witness otherwise also is wholly consistent with the narration of the prosecution story as given in the first information report (Ext. Ka-9) as well as in the statement of PW-2 Puttu Lal the other eyewitness. Some omission appearing in the statement of this witness given u/s 161 of the Cr. P. C. to the investigating Officer cannot be treated to be so much material as to demolish his entire statement, which he gave before the trial Court.

9. From the above, I find that the two eyewitnesses namely Puttu Lal (PW2) and Ram Pal (PW3) are such witnesses whose statements have rightly been accepted by the trial Court as wholly reliable. These witnesses belong to the same village Kheria to which the appellants-accused belong and even if during the night hours they have succeeded in identifying the kidnappers, there is no surprise in it. It has though, come in the evidence that it was a moon lit night, still if this fact is kept aside the witnesses can be treated quite natural for their approach to the things happening around and also in their capability to identify the accused, who belong to the same village. In this context itself, an argument has been advanced from the side of the accused-appellants that if the accused belong to the same village, they should have committed the crime after concealing their faces with cloth etc. The conduct of the accused in committing such crime without taking precautions for concealing their identity, is quite unnatural and the prosecution story should be rejected on this score only. I do not agree with this submission made by the learned counsel. The accused persons definitely appear as dare devils in their conduct while committing the present crime and it gives indication that they hardly fear the disclosure of their identity to the witnesses present on the scene. It has come in the evidence that the witnesses tried to intercept the accused persons while they were taking the kidnappee Suraj Pal, but they instead of having any fear from the witnesses and people present at the place, retorted and fired from their guns giving consequential threats against the lives of interceptors. The accused persons after this incident could not be traced in spite of all efforts made by the family members of the kidnappee as well as the other villagers for hours together. As it is noticed from the evidence, Ram Pal has not been traced out up till now. Obviously, the presumption in this regard would be that the kidnappee has been done away with. This itself indicates the facts that the accused persons hardly had any sense of fear from the witnesses and people present at the scene of occurrence and they have ventured to commit this crime without least hesitation or any sense of remorse.

10. In the cross-examination of the complainant as well as the two eyewitnesses (PW2 and PW3) suggestions have been made from the side of the defence that the tube well of the kidnappee, where he was sleeping along with witnesses, was not at all operative for want of electric connection and thus, there was no occasion for Ram Pal or the two eyewitnesses who claim to have gone there to take rest in the night. If tube well was not operating, there was absolutely no occasion for the witnesses for having kept their harvested crop there for the purposes of threshing etc. In this context, the trial Court of its own had

summoned two witnesses i.e. CW1 and CW2 who are the Junior Engineers in the Electricity Department. CW1 in his cross-examination has specifically stated that the agreement for electricity connection to the tube well of kidnappee's father Jagan Lal had been executed on 25-4-1980 and on the same day the B. L. Form and electric motor inspection report have been submitted in the office. He has also made it clear that after deposit of B. L. Form, the consumer, though not legally, can possibly utilize the power supply to his motor. Therefore, from the statement of CW1 it is reflected that the electric supply to tube well of the kidnappee for operating its motor was, though, officially given on 16-10-1980 but he might also be taking the supply for the operation of the said installed motor also from 25-4-1980 when the agreement was entered into and B. L. Form was deposited. Therefore, an attempt made by the defence to eliminate the factor of witnesses being present at the tube well of the kidnappee when the occurrence took place, does not appear to have succeeded as to disbelieve ocular account given by such witnesses. The defence has also cross -examined the Investigating Officer (PW4) on this fact and he has categorically stated that he had seen the electric motor installed at the tube well of the kidnappee and the electric cable for supply had been drawn from the transformer located in the field of the accused appellant-Badashah. He has also stated that he had seen belt for operating thresher with the help of electric motor lying on the spot. This piece of the statement of Investigating Officer further helps in proving that the electric motor installed at the tube well of the kidnappee Suraj Pal was energized, though not officially, and the threshing machine found kept on the spot could be operated with the help of the said motor. Obviously, from the aforesaid evidence, the defence taken by the appellants accused that there was no tube well of the complainant and no electric connection was available to it on the date when the incident has allegedly taken place, does not get probablised to any extent. The evidence of DW1- the Town In-charge, Hydel Distribution Division-II, Mainpuri who was examined at the instance of the accused persons has simply given the date of official connection given to the tube well of the complainant's father Jagan Lal. But prior to that on 14-2-1980, complainant's father had given objection to the department that his supply can be commenced from 25 K. V. A. transformer as on that date. There were only three connections of 5 K. V. A. given to other persons. This piece of evidence further goes to establish that even though the official connection on paper was given to Jagan Lal on 16-10-1980 but the unofficial supply from the transformer had been obtained by him from the date of his agreement i.e. 25-4-1980. Thus, by the date the incident had taken place (23-5-1980), the motor installed at the tube well of Jagan Lal was very much operative and the presence of kidnappee and the witnesses at the said tube well at the time of incident could not be at all doubted. This aspect of the prosecution story has also been elaborately discussed in the judgment rendered by the trial Court.

11. Another lacuna of the prosecution case, which has been pointed out by the learned counsel for the appellants, is that the F. I. R. in the present case is

extremely delayed. The incident took place in the night hours at about 10.00 P. M. on 23-5-1980 but the report of the incident was lodged at the Police Station Kuraoli located at a distance of 8 Kms. from the village, the next day at 5.15 P. M. There is obvious delay in lodging of the report but this aspect gets fully explained in the F. I. R. itself and also in the statements of the complainant (PW1) as well as the eyewitnesses (PW2 and PW3). After PW1 reached the place of occurrence, he was given the full account of the incident by the eyewitnesses. Sensing danger to the life of his brother, the complainant Pahalwan Singh (PW1) along with witnesses and other villagers immediately proceeded in search of him and this search by him and his family members continued even after lodging of the F. I. R. The conduct of the complainant to go out in search of his brother is very natural and if the lodging of the F. I. R. has been delayed on this account, it is quite justified and this cannot be treated as a major defect in the prosecution story. The life of the complainant's brother was more important than lodging of the report to the Police Station and if complainant's time has been consumed in such manner leading to some delay in making the report, it cannot be treated so material as to demolish the case of prosecution. Nothing has come in the cross examination of the complainant which may be taken as challenging to this explanation of delay and as such the trial Court appears to have rightly accepted this explanation as capable of fully justifying the apparent delay in lodging of the F. I. R.

12. From the facts and circumstances discussed above, I am of the view that the trial Court has considered the prosecution evidence in a right perspective and has correctly reached a conclusion that the prosecution had succeeded in bringing home the guilt for the offence punishable u/s 364 I. P. C. to the accused-appellants. The trial court does not appear to have committed an error in letting off the accused-Badshah if he was not named by eyewitnesses Puttu Lal (PW2) and Ram Pal (PW3).

13. Thus, in the aforesaid view of the matter, I hold that the trial Court has rightly found the appellants as proved guilty beyond doubt on the basis of evidence made available before it by the prosecution and the judgment and order of conviction and sentence passed against the appellants by it, does not require interference in this appeal which lacks merits.

14. The appeal is hereby dismissed and judgment and order of conviction and sentence passed against the appellants by the learned Addl. Sessions Judge is hereby confirmed.

15. The appellants are on bail. The Sessions Judge /C. J. M. concerned is hereby directed to ensure the arrest of the appellants-Badshah, Suraj Pal, Mulaim Singh, Rakshpal, Achhey Lal and Dhara Singh within a period of 15 days from the date of receipt of certified copy of this judgment and shall send them to jail with custody warrants to serve out the sentence. Thereafter, a compliance report of this order shall also be submitted to the Court.

16. Office is directed to immediately transmit the original record of the trial Court along with certified copy of this judgment to the Court below for compliance.