
(2007) 03 UK CK 0055
In the Uttarakhand High Court

Banarasi Lal Bachoo Lal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 307

Citation : (2007) NCC 734 : (2007) 3 UC 1489 : (2007) 1 UD 489

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—The appellant Banarasi Lal has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as "Cr.P.C.") against the judgment and order dated 19-7-1986, passed by the then Sessions Judge. Pithoragarh in Sessions Trial No. 09 of 1986, whereby he has convicted the appellant for an offence punishable u/s 307 of Indian Penal Code, 1860 (hereinafter referred as "I.P.C.") and sentenced him to undergo Rigorous Imprisonment for a period of seven years and a fine of Rs. 2,000/- and in default of payment of fine to further undergo R.I. for a period of six months.

2. In brief, the prosecution story is that, in the night of 15th August, 1985, one Sumer Lal, father of Ragghan Lal (P.W. 5) invited Madan Lal, injured (P.W. 4) and his brother-in-law Rishi Pal at a dinner in his house situate in village Kasani, Madan Lal and Ragghan Lal are sweepers in M.E.S., Pithoragarh and used to live in M.E.S. quarters. It is said that after the dinner they both along with Rishi Pal left the house of Sumer Lal for their respective quarters near M.E.S. At about 9.45 p.m. when all these three persons reached near the house of Rana, they saw in the torch light held by Rishi Pal, accused Banarasi Lal standing by the side of the road with his hands behind. When they reached near the house of Rana, Banarasi Lal attacked on Madan Lal with Khukhari and gave two blows on the head and neck of Madan Lal. Before Madan Lal could fall on the ground, Rishi Pal

held him on his arms and Ragghan Lal pounced upon the assailant Banarasi Lal and apprehended him with blood-stained Khukhari in his hand at the spot. On the alarm raised by them the neighbours, particularly the tenants of Rana's house reached there. In the mean time Major Rajendra Kumar Singh also reached there. The injured Madan Lal was held on a cot and rushed to Military Hospital. Major Rajendra Kumar Singh also accompanied him. The injured was given first aid. Major Rajendra Kumar Singh gave a telephonic message at Kotwali Pithoragarh that sweeper Madan Lal has been assaulted by other sweeper Banarasi Lal with some sharp edged weapon and he was brought to Military Hospital for first aid and request for immediate police action was made. This information was reduced in writing in G.D. No. 42 at 11.30 p.m. at Kotwali Pithragarh, the carbon copy of which is Ext. Ka. 5. Thereafter the injured Madan Lal was sent to District Hospital in a military ambulance for medico-legal and better treatment. At that time Dr. R.P. Bhatt, (P. W. 2) was on emergency duty in the District Hospital. He received the injured at 00.15 a.m. in the night of 15/16-8-1985 and examined him. The doctor found following injuries on the person of injured Madan Lal:

1. Incised wound of size 22 c.m. x 5 c.m. x scalp deep, commencing from left front top scalp and obliquely placed extending upto back of pinna of left ear, 6 cm. back of pinna. In way cutting the left ear, its pinna, opening of external meatus and tragus splitting them 5 cm. apart. Bleeding profusely. The margins of wound clear, sharp and inverted.

2. Incised wound of size 4 cm. x 3 cm. x skin deep on left neck middle region obliquely placed. Margins clear and sharp. Bleeding profusely.

3. G.C. of the patient was low, pulse 110 P.M. systolic B.P. low 100 M.H.G. The patient was kept under observation, x-ray was advised of above injury and hospitalized.

3. Dr. R.P. Bhatt prepared injury report, Ext. Ka. 2 and opined that the injuries were fresh and caused by some sharp edged weapon like Khukhari on 15-8-1985 at about 9.45 p.m. The doctor also opined that injury No. 1 was grievous and dangerous to life, whereas injury No. 2 was simple in nature.

4. Constable Ved Ram and Bhuwan Singh were sent with copy of G.D. to police club to inform the S.I. Sri Durvijay Singh (P.W. 6) to reach the scene of occurrence. Constable Ved Ram informed the S.I. that the injured was brought to District Hospital, Pithoragarh, therefore, S.I. Sri Durvijay Singh together with the above constables reached the District Hospital. The injured Madan Lal was admitted in the Hospital and he was not fit to give his statement. However, in the Hospital, Rishi Pal, brother-in-law of injured Madan Lal gave a written F.I. R., Ext. Ka. 1 to the S.I., which was transmitted by him to the Police Station through constable Ved Ram. Head Moharir Sri Mahar Singh, on the basis of written F.I.R., Ext. Ka. 1, prepared chick F.I.R., Ext. Ka. 7 and registered the case u/s 307, I.P.C. at 1.15 a.m. on 16-8-1985 against the accused Banarasi Lal vide G.D. Ext.

Ka. 6.

5. The investigation of the case was entrusted to S.I. Sri Durvijay Singh. He recorded the statement of Rishi Pal and inquired about the incident from the other persons who had accompanied the injured in the Hospital. The condition of the injured was not yet such as to give his statement, therefore, the I.O. could not record his statement in the Hospital. The I.O. then proceeded to the place of occurrence on a Government jeep with constables Ved Ram and Bhuwan Singh. On reaching the place of occurrence the I.O. found Ragghan Lal, Om Prakash s/o. Babu Ram, Jeet Singh, Bachchu Lal etc. with accused in their custody. They handed over the accused to the I.O. They also produced blood-stained Khukhari to him. The I.O. took the bloodstained Khukhari in his possession, sealed it on the spot and prepared memo, Ext. Ka. 4. Then he inspected the place of occurrence and took the blood-stained and plain earth from the place of occurrence and kept the same in two separate tins, sealed on the spot and prepared memo, Ext. Ka. 8. Thereafter the I.O. sent the accused in custody to police station through constables Ved Ram and Bhawan Singh and he himself recorded the statements of witnesses Ragghan, Om Prakash, Babu Ram and Jeet Singh. He also enquired of the incident from other persons present there. The I.O. prepared the site plan, Ext. Ka. 9 at the instance of witness Ragghan Lal. Thereafter the I.O. proceeded to reach the hospital. In the way he met the police escort carrying the accused to Court for judicial remand. There he interrogated the accused and reached the Hospital. In the hospital, the complainant Rishi Pal handed over a torch to the I.O. The I.O. inspected it, found it serviceable, prepared memo Ext. Ka. 10 and gave in the Superdagi of the complainant. By that time the condition of the injured had improved, so he contacted him and recorded his statement. He also took into possession the Baniyan and shirt of the injured, sealed them at the Hospital and prepared memo, Ext. Ka. 3. On the same day, i.e. 16-8-1985 the I.O. went to cantonment area where he recorded the statement of Major Rajendra Kumar Singh and inspected the patient's register. Ultimately, after completing the investigation, the I.O. submitted charge sheet, Ext. Ka. 11 against the accused on 4-9-1985. He also sent the blood-stained earth, plain earth, blood-stained Khukhari and blood-stained clothes to Chemical Examiner Agra for examination and report.

6. The C.J.M. Pithoragarh, vide his order dated 20-3-1986 committed the case to the Court of Session. On committal, charge u/s 307, I.P.C. was framed against the accused. He denied the charge, pleaded not guilty and claimed his trial.

7. The prosecution in order to prove its case, produced six witnesses. P.W. 1, Om Prakash is the scribe of the F.I.R. He has deposed that the F.I.R. was got scribed by Rishi Pal from him. This witness has proved his signatures on this written report.

8. P.W. 2, Dr. R.P. Bhatt has medically examined the injured Madan Lal on 16-8-1985 at 00.15 a.m. in the District Hospital, Pithoragarh and has prepared the injury report, Ext. Ka. 2.

9. P.W. 3, Om Prakash is a witness of presence of accused and the injured on the spot. He has deposed that on 15-8-1985, in the night at about 10-11 p.m., he heard the voice of Ragghan, came out of his house and saw that blood was coming out from the head of Madan Lal. He also deposed that injured Madan Lal was brought to Hospital in a cot and admitted there. This witness has also alleged that when he reached at the spot, Ragghan Lal and Rishi Pal were present there. Presence of accused Banarasi Lal at the spot was also alleged by this witness. However, this witness was declared hostile at the request of the prosecution.

10. P.W. 4, Madan Lal is the injured witness. This witness has deposed the prosecution story and has fully supported the case.

11. P.W. 5, Ragghan Lal is the eye witness of the occurrence. This witness has also supported the prosecution version.

12. P.W. 6, S.I. Durgvijay Singh is the I.O. of the case. He is a formal witness. He has narrated about the steps taken by him during investigation and has proved the various prosecution papers prepared by him during investigation.

13. The accused was examined u/s 313, Cr.P.C. He denied the prosecution version and stated that he has been falsely implicated due to enmity. He alleged that Madan Lal, Ragghan Lal, Sumer Lal and Rishi Pal are animus to him. They had made several attempts to kill him and they also raided his house in the night of 15/16-8-1985 at about 11 p.m. On the shouts raised by him, tenants of Rana's house viz. Bannu, Ram Phool, Kuldeep etc. reached there. They intervened the Marpit and thereafter the police reached there and arrested him without examining the true cause of the incident.

14. The defence also examined Bannu Lal as D.W. 1. The defence witness has stated that the injured Madan Lal and accused Banarasi Lal were animus to each other. Rishi Pal is the brother-in-law of Madan Lal, so he also developed bitterness against Banarasi Lal. On account of long standing enmity Rishi Pal attacked on Banarasi Lal several times. This witness claimed to have intervened the confrontation between them twice in the months of June and July, 1985. This witness further alleged that Ragghan is the sister's son of Madan Lal. On 15-8-85 at about 10-11 p.m. Madan Lal, Rishi Pal and Ragghan came to the house of accused Banarasi Lal. This witness has specifically alleged that he could not know as to how the quarrel started. He further deposed that he heard the voice of Madan Lal, Ragghan and Rishi Pal from inside the room. He came out of the room quite after some time hearing the shouts of the above persons. He further alleged that after about one hour police reached there, called Banarasi Lal from his house and without any inquiry from anybody lifted him into jeep and carried him to police station. He also stated that ground in front of the house of Banarasi Lal is rocky. Glass pieces of broken bottles were also lying there and any fall on them may cause deep wounds. The defence witness also alleged that after the said incident a panchayat of Biradari was held and the panchayat

punished Banarasi Lal with a fine of Rs. 1,000/- and two live pigs and out of this amount Rs. 500/- was awarded to Madan Lal as compensation.

15. The Sessions Judge on hearing arguments of counsel for the defence as well as the prosecution and perusing the evidence on record convicted the accused Banarasi Lal for the offence u/s 307, I.P.C. with which he was tried and sentenced him as stated above.

16. Being aggrieved, the accused /appellant has preferred the appeal before this Court.

17. I have heard Sri Amish Tiwari, learned Counsel appearing on behalf of the accused/appellant and Sri Nandan Arya, learned A.G.A. for the State and perused the record.

18. Learned Counsel for the appellant has argued that there is no independent and reliable witness to prove the crime against the appellant. Injured Madan Lal is inimical to the accused/appellant hence he is interested in the success of the prosecution case and conviction to the accused/appellant. Ragghan Lal, P.W. 5 is the sister's son of injured Madan Lal, and is also interested and partisan witness, hence no reliance should be placed on their testimonies. P.W. 3, Om Prakash, who has been produced by the prosecution to prove the spot arrest of the appellant and recovery of blood-stained Khukhari from him, has not supported the prosecution case and for that reason he was declared hostile on the request of the prosecution and this fact also weakens the prosecution version.

19. To substantiate the submissions raised by the learned Counsel for the appellant, it will be reasonable to discuss the prosecution evidence in detail.

20. P.W. 1, Om Prakash is the scribe of the F.I.R. This witness has deposed in his examination-in-chief that on the dictation of Rishi Pal he has written the F.I.R. Ext. Ka. 1 and he has also made his signatures on this written report. This witness has proved the F. I. R. as well as his signatures on it.

21. P.W. 4, Madan Lal, injured witness and P. W. 5 Ragghan Lal, eye witness of the occurrence, both have fully supported the prosecution version. P.W. 4, Madan Lal has stated that on 15-8-1985, he along with his brother-in-law Rishi Pal and Ragghan P.W. 5 saw accused Banarasi Lal in the torch light held by Rishi Pal, standing by the side of the road near Rana's house with both hands in the back. When he reached near the accused, the accused Banarasi Lal assaulted him, with Khukhari and gave two blows on his head and neck. He has further stated that Rishi Pal gave him support and Ragghan Lal caught hold of the accused and snatched the blood-stained Khukhari from his hand. On the alarm raised by them tenants of Rana's house, namely Jeet Singh, Shiv Charan, Ram Asray and Om Prakash etc. reached there. After a while Major Rajendra Kumar Singh also came there. He was laid on a cot and rushed to Military Hospital, where he was given first aid. He was then referred to District Hospital, Pithoragarh for medico-legal and treatment. This witness further deposed that about 6-7 years back accused

Banarasi Lal abused and insulted his brother Sumer Lal (not to be confused with Sumer Lal, the father of witness Ragghan). A report was lodged at the police station, hence for this reason the accused felt annoyed of it and developed enmity against him. This witness has been cross-examined at length but the defence has not been able to bring out any material which may lead to the inference that the witness is not giving a true account of the occurrence. From perusal of whole statement of this witness it is obvious that he has given a reliable and true version of the occurrence.

22. The another eye-witness of occurrence is P.W.5, Ragghan Lal. This witness has fully corroborated the testimony of injured eye-witness P.W.4, Madan Lal. He has deposed that on 15-8-1985 there was a dinner at the house of his father Sumer Lal. He resides separately in M.E.S. quarter. His father resides on a rented house near Chungi Chowki. He has stated that in the dinner along with him. Madan Lal and Rishi Pal had also come. After taking meal, he, Madan Lal and Rishi Pal returned to their quarters together. At about 9.45 p.m. when they reached 10 to 15 paces ahead of Rana's house, they saw accused Banarasi Lal standing on the side of the road with his hands back. This witness has deposed that they had seen the accused in the torch light held by Rishi Pal. When Madan Lal reached to the accused Banarasi Lal, the accused Banarasi Lal threatened Madan Lal to kill him and gave two blows of Khukhari, held by him in his hand, to Madan Lal, one on his head and the other on his neck. At this they raised alarm. The accused Banarasi Lal tried to run away but this witness rushed towards him and caught him and snatched the Khukhari held by the accused. This witness further deposed that the tenants of Rana's house Shiv Charan etc. reached there. In the meantime Major Saheb also reached there. Thereafter injured Madan Lal was rushed to Military Hospital for first aid and then he was admitted in the District Hospital Pithoragarh. This witness also alleged that the Khukhari snatched by him was handed over to Sub-Inspector which was sealed at the spot and memo recovery Ext. Ka.4 was prepared. This witness is also the witness of recovery of Khukhari and he has proved his signatures on it. The mere fact that this witness is the sister's son of injured Madan Lal, cannot be a ground to discard his reliable and cogent evidence. In the present case presence of Ragghan Lal, P.W.5 has not been disputed. Rather the defence has admitted that Madan Lal, Rishi Pal and Ragghan Lal were there at the spot. Nothing has come out from the cross-examination of this witness also, which may discredit his testimony. I find that the testimony of this witness is reliable and trustworthy.

23. Besides the eye-witness account produced by the prosecution, the medical evidence fully supports the prosecution case. Dr. R.P. Bhatt, P.W.2, who was on emergency duty in the District Hospital, Pithoragarh on 15/16-8-1985. had promptly examined the injured at 00.15 a.m. and found two injuries one on the scalp and the other one the neck of the injured Madan Lal. This witness has opined that the injuries could have been caused on 15-8-1985 at 9.45 p.m. by sharp edged weapon like Khukhari. He also opined that injury No. 1 caused on the head was grievous and dangerous to life.

24. So far as the testimony of P.W.3, Om Prakash is concerned, although this witness was declared hostile in the case, but this witness in his examination in chief has proved the factum of the occurrence. He has stated that on the day of the occurrence he came out of his house on the alarm raised by Ragghan and saw and blood was coming out from the head of Madan Lal and he was rushed to hospital on a cot. This witness further alleged that when he reached at the spot Ragghan and Rishi Pal were already there along with Madan Lal and accused Banarasi Lal was also standing there. Evidence of hostile witness cannot be treated as effaced or washed off the record altogether. It can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

25. The another important factor to be mentioned here, which is relevant in the prosecution case, is that the F.I.R. of the case was lodged at the police station promptly and there was no any occasion for fabrication and false implication.

26. Further no doubt, it is evident that the relations between the injured Madan Lal and accused Banarasi Lal have been inimical for last many years but it is noteworthy that enmity cuts both ends, where it impels the commission of the crime, so also may be the cause of false implication. In the present case, the facts and circumstances, do not tell the false implication of the accused. The defence had not been able to establish the false implication of the accused. The defence witness D.W. 1 Bannu Lal, seems to be an interested witness. He has clearly stated that he has not seen the occurrence with his own eyes. He had heard voice of the prosecution witnesses and quite after some time he had come out of his house. This witness has also shown the presence of prosecution witnesses and the accused at the spot. Further this witness has stated that after this incident Panchayat was held and accused Banarasi Lal was punished to a fine of Rs. 1000/- and two live pigs, out of which Rs. 500/- were awarded to the injured Madan Lal. This fact further supports the version of the prosecution that the accused has caused the injuries to Madan Lal.

27. From the facts and circumstances of the case and the evidence discussed above, it is quite clear that the prosecution has been able to prove its case against the accused beyond all reasonable doubt.

28. The learned Counsel for the appellant has also argued that the place of the incident was not that as stated by the prosecution and the prosecution has not been able to establish the place of occurrence by adducing reliable and cogent evidence.

29. The submission of the learned Counsel has got no force. The prosecution witness Madan Lal P.W.4 who is an injured eye-witness, has slated that when he was returning to his quarter along with Ragghan Lal and Rishi Pal on the road, near Rana's house, he received the blows of Khukhari at the hands of accused Banarasi Lal. P.W.5, Ragghan Lal has supported the version of the injured. The prosecution witnesses have clearly mentioned that the occurrence had taken place on the road near Rana's house near village Kasani. In the written report.

Ext. Ka. I, the place of occurrence has also been mentioned as the road near Rana's house near village Kasani. Further the I.O. visited the place of occurrence on 16-8-1985 at about 4.45 a.m. and found blood-stains at the place of occurrence and took into possession the blood-stained and plain earth. He also prepared memo recovery, Ext. Ka.8. The I.O. also prepared sketch map of the place of the occurrence, Ext. Ka.9. In the site plan, Ext. Ka.9, the place of occurrence has been shown on the road near Rana's House near village Kasani, with letter "A" and Rana's house has been indicated at a distance of 20 paces from place "A". In this way the place of occurrence has been fully established by the oral as well as documentary evidence, as the road near Rana's house near village Kasani, P.S. and District Pithoragarh.

30. Learned Counsel for the appellant also argued that the injuries sustained by Madan Lal are self-inflicted and the accused/appellant did not cause injury to him. According to him injured Madan Lal, Rishi Pal and Ragghan Lal raided the house of accused Banarasi Lal in the night of the accident. He suggested that broken glass pieces of bottles and pieces of tins and sharp edged stones were lying in front of the house of Banarasi Lal and during the course of Marpit Madan Lal might have fallen on the ground and sustained head injury as a result of the impact with glass or tin pieces or some sharp edged stones on the ground.

31. The above submission of the learned Counsel seems to be mere a suggestion based on imagination and has got no force. The prosecution witnesses have clearly established that the injuries were caused to injured Madan Lal by a Khukhari by accused/ appellant on his head and neck. The injuries are also fully supported by medical evidence. The Doctor has given the opinion that the injuries could have been sustained by the injured with a sharp edged weapon like Khukhari. Dr. R.P. Bhatt, P.W.2. has denied the suggestion of the defence that the injuries to injured Madan Lal could be possible by a fall on some sharp edged stone. The witness has further clarified that the margins of the injuries sustained by injured Madan Lal were clean and sharp whereas the margins of injury sustained by a fall on a stone will be irregular and tattered.

32. Learned Counsel further submitted that the investigation in the case suffers from irregularities. However the learned Counsel has not been able to show any irregularity which may go to the root of the prosecution case. It is well settled that minor discrepancies in the investigation cannot be a ground to discard the, otherwise trustworthy and reliable prosecution version.

33. The learned Counsel for the appellant lastly argued that recovery of bloodstained and plain earth, blood-stained Khukhari and blood-stained clothes of the injured is doubtful and this is the reason that the prosecution has not made any attempt to obtain the chemical examiner's report in this regard. No doubt, the prosecution has not brought on record the result of chemical examination of the above articles seized during investigation, but this lacuna does not materially affect the prosecution case. In the present case there is eye-witness account and witnesses have proved the recovery of these articles.

Recovery memos have been prepared by the Investigating Officer during the investigation and the independent witnesses have proved them in their evidence. The prosecution witnesses have deposed the use of Khukhari in the incident and the medical version also fully supports the use of Khukhari in the crime. I find that non-production of chemical examiner's report do not disbelieve the otherwise true and fully established prosecution case.

34. So far as the motive part is concerned, the prosecution has established the motive in the instant case. Admittedly there was long standing enmity between the injured Madan Lal and the accused Banarasi Lal and the accused had every occasion to commit the crime. The intention to commit the murder can safely be inferred from the fact that the accused gave two successive blows of Khukhari, a sharp edged weapon on the head-vital part and the neck of the injured Madan Lal and the offence committed by the accused/appellants comes within the ambit of Section 307, IPC as has rightly been held by the learned Sessions Judge. I do not find any illegality and irregularity in the findings arrived at by the learned Sessions Judge.

35. From the above discussion and the circumstances of the case 1 also come to the conclusion that the prosecution has been able to prove its case u/s 307, I.P.C. against the appellant Banarasi Lal beyond all reasonable doubts. The sentences of imprisonment as well as fine awarded to the appellants seem just and reasonable and need no interference in appeal.

36. For the reasons above, the appeal being devoid of merit, is hereby dismissed. The judgment and order dated 19-7-1986 passed by the learned Sessions Judge, convicting the accused/appellant Banarasi Lal u/s 307, I.P.C. and sentencing him to undergo R.I. for seven years and a fine of Rs. 2000/- and in default of payment of fine to further undergo R.I. for six months, is hereby confirmed.

37. The accused/appellant Banarasi Lal is on bail. His bail bonds are cancelled and sureties discharged. He shall be taken into custody forthwith and sent to jail to serve out the sentence of imprisonment awarded against him.

38. Let the record be transmitted back to the trial Court for compliance, to be reported to the Court within a month.