

(1991) 01 AHC CK 0126

In the Allahabad High Court

Case No : Criminal Appeal No's. 348 and 3648 of 1979

Biram

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 201, 302

Citation : (1991) 15 ACR 165

Hon'ble Judges : H.C. Mittal, J;G.D. Dube, J

Bench : Division Bench

Advocate : Bhagwat Prasad Singh and R.K. Jain, for the Appellant;

Final Decision : Allowed

Judgement

G.D. Dube, J.—The above two appeals have arisen out of judgment and order of Additional District and Sessions Judge, Saharanpur, holding Appellants Rehtu and Biran Guilty of the offence u/s 302, IPC, and convicting and sentencing each of them to undergo imprisonment for life. Since the two appeals arise from same judgment, we are deciding them together.

2. The prosecution case was that in the Ramlila of Unchagaon, some quarrel had taken place between Iqbal and Appellant Rehtu. Thereafter, the dispute had been settled by the intervention of the residents of Manglaur where the deceased resided and that of Unchagaon. At about 9.00 to 10.00 a.m. on 23-3-1978, Appellant Rehtu came to the house of reporter Vedpal Singh (PW 1) and started abusing the family members. At that time, Pitam (deceased) and Om Vir were also present. They asked Rehtu to desist from abusing. Meanwhile, Iqbal had also arrived and he gave few slaps to Rehtu. Thereupon, Rehtu went away stating that he will take revenge. On 1-4-78 Vedpal, his brother Pitam and nephew Kunwarpal were cutting sugar-cane and pilling of leaves in their Chaks commonly called as "BHERIYON WALA CHAK". At about 2.00 P.M., Rehtu, Malhar, Biran, Tejpal, Mohkam, Ram Singh and Sausih came. Out of these persons, Rehtu

and Biran had pistols and the remaining had lathis. They started challenging the three persons cutting sugar cane that they will take revenge and kill each of them. They had raised alarm. Consequently, Om Prakash, Jai Kumar and Kiranpal came. Rehtu and Biran took out their Pistols and pointed the barrels towards them. Seeing this, the three took to their heels for their lives. The assailants chased them and surrounding Pitam in the Field of Jaimal of Unchagaon, Rehtu and Biran fired their pistols towards Pitam. After Pitam fell down, they carried the dead body of Pitam on their lathis and left it in a wheat field in village Rajpur. After leaving the dead body, the accused went away.

3. A written report of the occurrence was lodged by Vedpal Singh at 6.15 p.m. same day at Police Station Jhabreda, district Saharanpur.

4. The investigation was taken up by Mahendra Sharma, S.I. (PW 6). He could not take up inquest same day as it had become dark. Instead he conducted the inquest proceedings next morning and prepared inquest report. He sent the dead body in a sealed cover to B.T.D. Hospital, Haridwar. The post-mortem was conducted by Dr. B.S. Lal (PW 7) at 1.00 p.m. on 3-4-1978. The doctor had found that the deceased was wearing a dirty Dhoti and Kurta. He had found the following ante mortem injuries:

1. 53 Fire-arm wounds over the face and head in right side.

47 are wounds of entry and five are abraded and burnt area of skin which are placed posteriorily. They are spread in an area of 20 cm. before backward and 13 cm. side to side. Five are each 3 cm x .5 cm. almost vertically placed. Rest of entry wounds are placed as below (a) 2 are on the right cheek below the eye, two are just above the right eye brow, 11 are on the right temple, 20 are on the forehead and 12 on the top of head. Thus totally 47. Each is .5 cm. x .5 cm. x they are bone deep. The margins are contused and black.

2. Contusion 15 cm. x 8 cm. left lumber region towards back.

3. Contusion with abrasion left buttock 18 cm x 11 cm.

5. Several shots were recovered from the body. The stomach contained two pounds of dirty water. The small and large intestines were full, but the rectum was empty. The urinary bladder was also empty.

6. The Investigating Officer had prepared the site-plan of the fields where murder had been committed and the dead body was thrown. He had found cut and peeled sugar-cane in the field of the deceased. He had also found three Daratis, two Harpalis and one Hukka in that very field. He had found blood at both the places i.e. in the field where the murder was committed and dead body was ultimately thrown. After other usual investigation, The investigating Officer had submitted a charge-sheet against the Appellant and six others.

7. The Appellants were charged for the offences under Sections 148, 302, and 201, IPC The other accused Molhar, Shiv Singh, Rai Singh, Tejpal and Mohkam

were charged for the offences under Sections 147 and 302 read with Section 149 and 201, IPC.

8. The prosecution examined eight witnesses and filed affidavits of two formal witnesses. The accused pleaded not guilty. They did not produce any oral evidence in defence. They filed only some documents. After appraisal of evidence, the lower court held the Appellants guilty of the offence u/s 302, IPC. The remaining five accused mentioned above were acquitted of all the charges.

9. It has been argued on behalf of the Appellants that where the case of the prosecution was not believed in respect of some accused, then on same evidence it should not be believed in respect of the Appellants also Secondly, it was urged that the prosecution does not explain contusions on the person of the deceased Thus the medical evidence does not support the ocular evidence. Lastly, it was contended that the witnesses are not reliable.

10. It was pointed out that Rehtu had been examined by a doctor on 23-3-1978 at 3.20 P.M. The injury report is Ext. Kha 1. He had complained pain on the left side of chest. A supplementary report about his injury was given by Dr. P.C. Agarwal. He had found fracture of lamellar pattern of 9th rib on the left side chest. Secondly injury No. 3 about complaint of pain on left side chest was opined to be grievous by the Medical Officer. This report is Ext. Ka 2, It was urged that since Rehtu was injured in a grievous manner only eight days before the occurrence, it was, therefore, not possible for him to have gone to the place of occurrence to take revenge.

11. The prosecution story has not been believed in respect of the five accused who have been acquitted. It does not transpire that a Government Appeal was field by the State Government. In these circumstances, the case of the prosecution regarding the two accused should be looked with caution and there should be sufficient reason for believing the prosecution case against the Appellants. The prosecution case could be believed if the prosecution was able to explain the two contusions found on the dead body of the deceased. The prosecution does not say that the five accused who have been possessing lathis had wielded their weapons. One of the contusions was on the back and the other on the left buttock. They were quite big in size. The area of second contusion on the back was 15 cm. x 8 cm. The other contusion on the buttock was 18 cm x 11 cm. The prosecution tried to explain these two abrasions by stating that they had been caused while the dead body was being taken on lathis by the accused. It was stated that one lathi was placed near the head region and the other towards waist on the buttock region. Even if we accept this contention, then the third contusion on the buttock should have extended towards the right buttock also. Dr. B.S. Lal (PW 7) had stated in paragraph 11 of the cross-examination that these contusions could be caused only by a strike with a hard object by force. In the next line he had obliged the prosecution by stating that if a living person was carried on a lathi, then contusions 2 and 3 could be caused. The doctor had forgotten the area of the two contusions. By placing a body on a lathi there

would be long contusions with the width not more than that of a lathi. Any lathi could not be as wide as 11 cm. and 8 cm. The contusions are caused only when a hard object strikes against the body with sufficient force. Simply by placing the body on two lathis, the contusions could not be caused. Moreover, the body could not be carried on a lathi by placing one lathi at the buttock region and the other on the back. In that situation, the back will hang between the two lathis. Hence a living person after being placed in the above fashion over two lathis would bend at the back and fall on the ground. This will cause some abraded contusions on the waist region. The above, therefore, goes to show that the explanation put forward by the prosecution witnesses about the contusions is only a product of their imagination and not a true account of their ocular version.

12. We agree with the contention of the defence that in the state of injury particularly in the chest region with fracture of tenth rib, Rehtu would have remained lying on his cot. On 6-11-1978 the date of his statement u/s 313, Code of Criminal Procedure, the accused had stated his age as sixty four to sixty five years. This has not been disputed by the prosecution. The learned Sessions.

Judge has also not observed otherwise holding that the accused was not sixty four to sixty five years on the date of his statement. He had also stated in reply to question No. 29 that in the marpit between him and Surendra his bones has fractured. It is the prosecution case that some marpit had taken place on 23-3-1978 between Rehtu and the complainant's party. The prosecution has come forward with a case that Rehtu and his companion Biram had surrounded the deceased who was running for his life. Such an active role was not possible from a person having grievous injuries on the chest.

13. The evidence of the three eye witnesses was also not reliable. Vedpal had stated that the accused had kept the body of Pitam on two lathis and went away. He and other witnesses had followed the assailants upto the place where the dead body was thrown. In order to make the carrying of the dead body on a lathi probable, the prosecution had introduced in the statement of Jai Kunwar (PW 2) that Dhoti of Pitam was taken out. He was made naked. The dead body was tied with the lathis by means of that Dhoti. Kunwarpal had gone ahead and stated in examination-in-chief that he had tied Dhoti on the dead body of Pitam at the place where it was thrown in the field of village Rajpur. We have seen above that the doctor conducting the post-mortem had found a Dhoti tied on the dead body. It does not appear probable that any body will tie Dhoti on the dead body. At the best he may cover the body with some cloth or the Dhoti allegedly lying at the spot. All these factors go to show that the prosecution has not come forward with clean hands. Some improvements have been made during the statements of the witnesses.

14. Vedpal (PW 1) had stated that he was following the accused from a distance of hundred yards. He had seen that throughout the way blood was dropping on the ground from the body of the deceased. It was quite impossible that a man moving at a distance of hundred yards from the assailants would notice the

dropping of blood from the dead body. Ajai Kunwar (PW 2) stated that while they were following the assailants, they had been raising an alarm. He stated that they were keeping a distance from the assailants and were following in such a manner that the assailants could not see. The words "CHHUPTE HUVE" have been used in paragraph 15 of the cross-examination. In this way, the intention was to keep their identity not noticed by the assailants. In such a circumstance the witness would not have raised any alarm. Kunwarpal (PW 3) had stated that when he had tried to save his father, the accused had fired towards him. While they were moving along with the accused they used to keep distance and some-time moved erect and sometime in a bent condition so that they may not be seen by the assailants. There was no need to move so when they were hundred yards away.

15. The prosecution story regarding participation of other accused has not been believed by the lower court. We find the manner of taking the dead body from the place of killing to the place of throwing the dead body not believable. The story narrated by the three eye witnesses mentioned above is not believable.

16. For the reasons mentioned above, we find that the prosecution story regarding the two Appellants was not believable. The lower court has wrongly held the Appellants guilty of the offence punishable u/s 302, IPC. The Appellants should have also been held guilty of the charge framed against them.

17. In the result both the appeals succeed and are allowed. The judgment and order of lower court are set aside. The Appellants are acquitted of the charge levelled against them. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.