
(2006) 05 AHC CK 0136

In the Allahabad High Court

Case No : Criminal Bail Application No. 1232 of 2006

Chandra Pal (In Jail)

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2006) 05 AHC CK 0136

Hon'ble Judges : K.N. Ojha, J

Bench : Single Bench

Advocate : S.A.N. Shah and Virendra Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

K.N. Ojha, J.—Heard Sri Virendra Singh and Sri S.A.N. Shah, learned Counsel for the applicant, learned A.G.A. and have perused the record.

2. This application has been moved by Chandra Pal for bail in crime No. 434 of 2005 u/s 302 IPC, P.S. Kemri, district Rampur.

3. According to prosecution Smt. Nirmalawati lodged FIR against applicant on 3.9.2005 at 4.30 a.m. containing the fact that on 1.9.2005 at about 12.00 noon applicant Chandra Pal had beaten her husband Nathu Lai in respect of payment of wages. Nannu, Rampal, Devi Das, Mahendra Pal of her village had intervened. When Smt. Nirmalawati made complaint to Chandra Pal as why he had beaten her husband, he threatened that he would kill her husband. On 2.9.2005 at 11 p.m. she alongwith her youngest son Pallu Lai was sleeping on her cot in courtyard. Her husband Nathu Lai and her three daughters aged about 8 years, 6 years and 4 years were also sleeping. On 3.9.2005 at 00.30 a.m. in night when there was light of Dhebbri Chandra Pal came with daon, and caused injury on the neck of her husband. She raised alarm. On her alarm her husband's younger brother Thakur Das, her nephew Mahendra Singh and many other persons

including her three daughters witnessed the occurrence. Chandra Pal ran away in the eastern side alongwith his daon. Nathu Lai died on his cot. The police station is at the distance of 10 Kms. from the scene of the occurrence.

4. Postmortem examination on the dead body of Nathu Lai aged about 40 years was got done on 3.9.2005 at 3.15 p.m. and following injury was found on his dead body: -

One lacerated wound on left lateral aspect of neck below left ear. The wound was present from front ear of the back of neck in more than half region. Cervical bone trachea, oesophagus was hanging and cut away. The cause of death, in the opinion of the doctor, was the anti-mortem injury caused to him.

5. Inquest report was prepared on the same day and in the opinion of the witnesses death was caused by Daon. Site plan was prepared. Dead body of Nathu Lai was found on the cot. Dhebri was found on the wall of the house. The Investigating Officer took blood stained Dari and cut plastic yarn of the cot in custody and prepared its recovery memo. Applicant was arrested. It is said that he made confession and got recovered Daon in presence of public witness which he had kept in a pit under root of date tree.

6. Learned Counsel for the applicant submits that it is an occurrence of night. Applicant has been falsely involved in the crime. Daon is a sharp edged weapon while lacerated wound was caused to the victim. It shows that there is no witness of the occurrence and merely on the basis of suspicion applicant is involved in the crime.

7. A perusal of the record shows that there was motive for applicant to commit murder of Nathu Lai. FIR has been promptly lodged within four hours by name against the applicant while the police station is at the distance of 10 Kms. from the scene of the occurrence. If murder of Nathu Lai would have been committed at some other place, neither FIR would have been so promptly lodged in the same night nor body would have been found on the cot inside the house. Blood stained Dari, cut away yarn of cot, was found on the spot. Blood stain was also present there. The presence of informant and other witnesses in the night is natural who ran on the alarm raised by the wife of the victim and they saw the applicant running away alongwith his weapon daon. Daon was recovered in presence of witnesses on the pointing out of the applicant.

8. The learned Counsel have laid emphasis that daon is a sharp edged weapon and it could not cause lacerated wound. A perusal of the record shows that informant as well as all the witnesses, who are named in the FIR have stated that daon was used in cutting neck of the victim Nathu Lai. In inquest report the same report was prepared in presence of the witnesses, recovery of weapon daon was made by the police on the pointing out of the applicant in presence of the witnesses, which he had concealed in a pit below the root of date tree. Daon is a heavy cutting weapon. It is used to cut away rough and tough articles. Its edge is thin and back portion is thick and heavier, with the result that on edge

point the nature of injury is incised and on the point where back portion of daon enters, it causes laceration in the injuries which is created by the edge point and thus the back portion of daon widens the injury and gives shape of lacerated wound. In this case also post mortem examination report shows that neck was half cut trachea, oesophagus and cervical bones etc. were cut away. If some blunt object would have been used, half neck and these organs of the body would not have been cut away, resulting into instantaneous death of Nathu Lai. Blunt object could not cut yarn of cot. Thus there is no discrepancy in respect of weapon, which is mentioned in the FIR and in the injury, which finds place in postmortem examination report.

9. Nathu Lal was 40 years old. The conduct of the applicant was so cruel that he has made the wife of victim and his minor children orphan. There was light of Dhebri. Persons who have seen many times by the witnesses were recognized while running away and the informant, widow and her daughters had seen when the applicant entered into his house and caused injuries.

10. It is submitted by the learned Counsel for the applicant that light of dhebri only is said to be on the spot and it was not sufficient to recognize the real accused. Dhebri creates light which will be sufficient to recognize a person, if he enters into a room or in Courtyard. The injury was not caused by any firearm from distant place but injury was caused on neck by standing just near to the victim and other family members who were sleeping there. Thus the applicant had gone to the place where there was light of dhebri. Thus contention is not maintainable that it was a dark place and real accused could not be recognized. FIR has been promptly lodged in the same night. If real accused would have been seen, there would not have been delay in lodging FIR or there were chances of deliberation and concentration but it is not so in this case.

11. Considering the facts and circumstances, the gravity of the offence, the role which was played by the applicant in murder of Nathu Lal, this Court does not find it proper case to enlarge the applicant Chandra Pal on bail.

12. Bail application moved by Chandra Pal is rejected.