
(2016) 02 AHC CK 0093
In the Allahabad High Court
Case No : Criminal Appeal No. 268 of 1982

Chhotey Lal and Others

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, Section 307, Section 34, Section 452

Citation : (2016) 02 AHC CK 0093

Hon'ble Judges : Surendra Vikram Singh Rathore and Pratyush Kumar, JJ.

Bench : Division Bench

Advocate : Manohar Lal Syal and Nagendra Mohan, for the Appellant;

Final Decision : Allowed

Judgement

Surendra Vikram Singh Rathore, J.—1. Mr. Nagendra Mohan, learned counsel for the appellants and Mr. Umesh Verma, learned Additional Government Advocate were heard at length.

2. Under Challenge in the instant criminal appeal is the judgment and order dated 30.03.1982 passed by learned II Additional Sessions Judge, Hardoi, in Sessions Trial No. 174 of 1981, Police Station Shahabad, District Hardoi whereby all the four appellants were convicted and sentenced as under:-

Appellant Chhotey Lal was convicted and sentenced as under:-

(i) Under Section 452 IPC - Four years Rigorous imprisonment with fine of Rs. 1000/-.

(ii) Under Section 302 IPC - Imprisonment for life with fine of Rs. 1000/-.

(iii) Under Section 307/34 IPC - Five years" Rigorous imprisonment. In default of payment of fine, he will undergo further simple imprisonment for a period of six months. All the sentences were directed to run concurrently.

Appellant Moti was convicted and sentenced as under:-

(i) Under Section 452 IPC - Four years Rigorous imprisonment with fine of Rs. 1000/-.

(ii) Under Section 302/34 IPC - Imprisonment for life.

(iii) Under Section 307 IPC - Five years" Rigorous imprisonment. In default of payment of fine, he will undergo further simple imprisonment for a period of six months. All the sentences were directed to run concurrently.

Appellant Ram Murti and Shukul were convicted and sentenced as under:-

(i) Under Section 452 IPC - Four years Rigorous imprisonment with fine of Rs. 1000/- each.

(ii) Under Section 302/34 IPC - Imprisonment for life each.

(iii) Under Section 307/34 IPC - Five years" Rigorous imprisonment each. In default of payment of fine, they had to undergo additional simple imprisonment for a period of six months. All the sentences were directed to run concurrently.

3. During pendency of the instant appeal, appellant No. 1 Chhotey Lal, appellant No. 2 Ram Murti and appellant No. 4 Moti expired. Hence, the appeal so far as it relates to appellants Nos. 1, 2 and 4 was abated vide our order dated 24.11.2015. At present only appellant No. 3 Shukul is before us.

4. In brief, the case of the prosecution was that the complainant Murari Lal and all the accused persons were residents of the same village Naurazepur, Police Station Shahabad, District Hardoi. The complainant Murari Lal and injured Mahadev happens to be the real brothers. One Chokhe Lal is alleged to have been murdered in the instant offence. The complainant happens to be the son of the deceased.

5. In the intervening night of 4/5-10-1980 at about midnight the complainant Chokhe Lal, Smt. Katori widow of Chokhe Lal, Mahadev, Smt. Chameli (wife of the Mahadev) were sleeping inside their houses and in their houses lanterns were on which were providing sufficient light in the house. Hearing the sound of foot steps Murari Lal, complainant got up and flashed his torch and saw all the appellants armed with fire arms accompanied with two other unknown persons armed with lathi entering the courtyard of his house from the western side. The complainant challenged the accused persons at which Chhotey Lal exhorted that he should be shot dead but Murari Lal ran away from there and the fire shot by Chhotey Lal could not hurt him. Running from there Murari Lal (complainant) came to the house of Mahadev. In the meantime, accused Chhotey Lal fired at Chokhe Lal while his companions gave some lathi blow also to Chokhe Lal. From there all the accused persons came to the house of Mahadev, Moti fired at Mahadev causing injuries to him. This entire occurrence is said to have been seen by Murari Lal, Mahadev, Smt. Katori, Smt. Chameli, Smt. Kamla Devi in the light of lantern and torches. Hearing the noise of fires and cries one Jaichand also reached there and fired two shots in the air with his licensed gun and thereafter

the culprits ran away from there. First information of this incident was lodged by the complainant on 05.10.1980 at 6.55 a.m. naming all the appellants. After registration of the case investigation proceeded.

6. The brief background of this incident was that in the year 1978 Visheshwar who happens to be brother of surviving appellant Shukul was murdered and in the said murder case one Narpat who was father of the deceased Visheshwar, had lodged written report against Murari Lal, Chokhe Lal, Sri Krishna, Makrand and Amar Nath. In that sessions trial all the accused persons were acquitted in the year 1979. Since then Narpat and other members of his family were in search of an opportunity to murder Murari Lal. One year prior to the present incident Sripal, Lochan, Ram Murti had made an attempt to commit the murder of Murari Lal by firing at him and the said case of attempt to murder was pending in the court of sessions on the date of incident. During pendency of the sessions trial of the instant appeal the said case under Section 307 IPC also ended in conviction. On account of these incident and litigation there has been a long standing enmity between the two sides.

7. The defence of the accused persons was of their false implication because of enmity. It was stated that virtually it was a case of dacoity but only because of the enmity the appellants have been falsely implicated in this case showing it to be a case of murder.

8. After registration of the case the injured persons were sent for their medical examinations. Medical examination on the body of Chokhe Lal s/o. Sri Ramanna was conducted on 05.10.1980 at 9:35 a.m. at PHC, Shahabad, District Hardoi and following injuries were reported on his person:-

(i) Gun shot wound of entry with inverted margins 3 c.m. x 2 c.m. x oral cavity deep and oval in shape. On left side cheek 1 c.m. in front of lower part of left ear. Blackening, charring, tattooing present wound was directed inwards, downwards and frontwards. Fracture of the part of mandible at the site of injury mark. No shot detected from the wound and general condition of the patient was unconscious restless and poor. Pupils were dilated and hazy.

In the opinion of the doctor the injuries were kept under observation and X-ray of the skull was advised. He was referred to District Hospital, Hardoi, as the condition was very serious. The cause of injury was fire arm and duration was about half day.

9. On the same day Mahadev was also medically examined at 10.05 a.m. and following injuries were reported on his body:-

(i) Gun shot wound of entry with inverted margins 2 c.m. x 1.5 c.m. x bone (maxilla deep), oval in shape on right side of face adjoining below the right nostril, charring, blackening and tattooing present. Wound was directed backwards slightly upwards and in front no shot detected from the wound.

(ii) Bruise 3 c.m. x 1.5 c.m. on front and upper most part of the right upper arm.

Pinkish colour with tense diffused swelling around injury mark.

(iii) Bruise 5 c.m. x 1.5 c.m. on front and lower most part of right thigh pinkish colour with tense diffused swelling around injury mark.

In the opinion of the doctor all the injuries were simple except injury No. 1 which was kept under observation and X-ray of the skull was advised. Patient was referred to District Hospital, Hardoi, immediately. The injury No. 1 was caused by fire arm and the other two injuries were caused by some blunt object and duration was about half day.

10. The deceased Chokhe Lal as per the medical advise was taken to District Hospital, Hardoi, where he succumbed to the injuries and died on 06.10.1980 at 7.45 a.m. Information of this death was given by Shiv Narayan, ward boy to the local police station. On the basis of that information inquest proceedings were conducted and after completing the other formalities the dead body was sent for postmortem. Postmortem on the body of the deceased was conducted on 07.10.1980 at 3:00 p.m. as per the postmortem report the age of the deceased was about 60 years and he died at District Hospital Hardoi on 06.10.1980 at 5:30 a.m. As per the postmortem report also same injury was reported by the doctor in the postmortem report which was mentioned in the medical examination.

In the opinion of the doctor the cause of death was shock and haemorrhage as a result of ante-mortem injuries.

11. During course of investigation, the blood stained and plain earth were recovered from the house of injured Mahadev and also from the house of injured Chokhe Lal and the clothes of the deceased Chokhe Lal were also sent for chemical examination which were found to be blood stained.

12. After completing the investigation the charge-sheet was filed against all the named accused persons.

13. Defence of accused was of denial and his false implication due to enmity.

14. In order to prove its case the prosecution has examined PW-1 Murari Lal, the complainant, PW-2 Mahadev, injured witness of this incident, PW-3 Dwarika, a formal witness, who was carrier of the dead body, PW-4 Jiya Lal Verma Sub Inspector who has proved the chik report and G.D. of this case as secondary evidence and has investigated this case as first Investigating Officer, PW-5 Mohan Singh who has subsequently taken up the investigation on 08.10.1980 and after completing the same has filed the charge-sheet on 03.12.1980, PW-6 Dr. S.C. Vaish, who has medically examined Chokhe Lal on 05.10.1980 and also Mahadev on the same day, PW-7 Sri Nakshatra Singh is a formal witness who had taken clothes and blood stained and plain earth recovered from the place of occurrence to the Forensic Science Lab, PW-8 Sri B.N. Singh, who has conducted the inquest proceedings in Hardoi on the basis of the information received from the District Hospital, Hardoi, PW-9 Dr. S.K. Luthara, who had conducted the postmortem on the body of the deceased. Apart from it, one affidavit of

Vishwanath Pandey, Office Superintendent, District Hardoi, was filed regarding sending of the recovered material to Forensic Science Lab and it was endorsed on this affidavit that there is no need to cross examine this witness. Likewise, affidavit of constable Sarnath Mishra, was also filed who had deposited the recovered property in the Malkhana and he has stated that he has not given any opportunity to anyone to tamper these items and an endorsement was made by defence on this affidavit that no cross examination is to be made.

15. No evidence in defence was adduced on behalf of the appellants.

16. After appreciating the evidence on record, the trial court has convicted the appellants as above. Hence the instant appeal.

17. Submission of the learned counsel for the appellants was that the incident of this case is alleged to have taken place more than 35 years ago and absolutely no role was assigned to the surviving appellant Shukul. The accused persons who were assigned the role of causing death of Chokhe Lal and injuring Mahadev have already died and there was nothing on record to infer that the appellant in any manner shared the common object or common intention with the other accused persons. So in this background, it is submitted that the appellants deserve to be granted benefit of doubt.

18. On the contrary, learned Additional Government Advocate has submitted that the appellant Shukul though he has not been assigned any specific role or overt act in the instant offence but his presence alongwith gun at the place of occurrence which was the houses of the deceased and the other injured was itself sufficient to hold that he shared the common intention.

19. Before proceeding further we would like to discuss inter-se relationship of the accused persons. Appellant Chhotey Lal is son of Ram Murti. The sole surviving appellant Shukul is son of Narpat and real nephew of Chhotey Lal. The appellant Ram Murti was son of Buddha and Buddha happens to be real brother-in-law (Sala) of appellant Chhotey Lal. Admittedly, a long standing enmity between two sides exists. In the year 1978 Visheshwar who happens to be brother of present appellant Shukul was murdered and in that murder case Narpat the father of Visheshwar and present appellant had lodged the report against Murari Lal, the complainant of this case, Chokhey the deceased of this case, and Sri Krishna, Makrand and Amar Nath. The aforesaid sessions trial was acquitted in the year 1979 i.e. about one year prior to the instant incident and therefore, Narpat and other members of his family were trying to commit the murder of Murari Lal. Apart from it, one year prior to the present incident Sripal, Roshan and Ram Murti had attempted to commit the murder of Murari Lal by firing at him and that case was pending in the court of sessions on the date of occurrence. However, during pendency of the trial, said case under Section 307 IPC also ended in conviction. Because of these incidents there was a very strong enmity between the two sides. Enmity is always a double edged weapon, on one hand it may work as a motive to commit the offence and on the contrary, it may be a ground

for false implication of the accused.

20. The incident of this case is alleged to have taken place in the residential house of the injured and the deceased. It transpires from perusal of the site plan that two houses are adjacent to each other and are connected with small doors in between the two. The complainant in his evidence has given a detailed version of the topography of the two houses. Learned counsel for the appellants has challenged the evidence of PW-1 that he was not in a position to see the incident that occurred with Murari Lal because he was at different place and likewise the evidence of Murari Lal has been assailed on the ground that from the statement made by him in his cross examination he was not aware of the earlier part of the incident. Perusal of the site plan shows that the deceased Chokhey Lal was sleeping in the same house in a Chhappar and in the courtyard of the same house the complainant Murari Lal was sleeping. However, the other injured was sleeping at a place "XE" and in between the two houses there are two rooms interconnected with each other. According to the evidence of the complainant he heard the noise of foot steps of the accused persons in the night so he flashed the torch and asked who is there, thereafter, the accused Chhotey Lal fired at him but he escaped the said fire and ran away. Thereafter, the accused persons went near his father Chokhey Lal and Chhotey Lal fired at him which ultimately proved fatal. Thereafter, they went to the house of Mahadev where he was fired at by Moti. Perusal of the evidence of the injured Mahadev shows that he has stated only about the incident that took place with him and role of firing on him was assigned to co-accused Moti and not to the present appellant. He has given certain statements in his cross examination which shows that he was not aware of the earlier part of this incident. He had not seen Murari Lal alias Babu Lal going out of his house or Chhotey Lal firing on his father. During the incident he has not seen the incident inside that took part in the house of the complainant nor he heard his alarm. When accused persons fired at him before that he had not heard the noise of fire and he has stated that after the incident the villagers came and he narrated them the story as happened with him and he also told about the incident to Babu Lal (complainant). On the strength of this evidence, learned counsel for the appellants has argued to disbelieve the evidence of PW-1. Admittedly, in this case the incident has taken place at two places. From the place of occurrence of first part of incident the place of occurrence of the other incident was not visible. But it does not mean that the evidence of both the witnesses should be disbelieved only on the ground that it was not possible for them to witness the other part of the incident. So the evidence of the two witnesses can be relied upon to the extent which could have been witnessed by them as the incident has taken place inside the house and the witnesses being the family members were most natural witnesses. As stated earlier, there is long standing enmity between two sides. Perusal of the evidence of PW-1 the complainant Babu Lal alias Murari Lal shows that it was Chhotey Lal who had collected all the accused persons to commit the offence and he shot first fire on the complainant thereafter he shot second fire on the deceased Chokhey Lal and

caused his death and the third fire was shot by accused Moti on Mahadev. The injured witness Mahadev has stated that the other two unknown persons who were armed with lathi had given a blow of lathi to him but perusal of the FIR and the entire prosecution evidence of the two eye witnesses shows that absolutely no role, whatsoever, was assigned to the present surviving appellant Shukul. It transpires from perusal of the record that at the time of incident he was aged about 20 years only. If he had gone to take revenge of the murder of his brother Visheshwar then he was supposed to take active part in this incident and would have ensured the death of complainant Moti by firing at him. Since he has not taken any part in the incident so a doubt is created regarding his involvement in this incident. As stated earlier, a long standing enmity between two sides may be a ground for false implication also. So the appellant Shukul becomes entitled for benefit of doubt as there was absolutely no allegation that he in any manner had taken part in this incident. Since he is the sole surviving accused-appellant and he has not been assigned any role in this incident, therefore, he is entitled to get the benefit of doubt.

21. In view of the aforesaid discussion, we are of the considered view that this appeal deserves to be allowed and is hereby allowed. Appellant Shukul is on bail. His bail is cancelled and sureties are discharged. He is acquitted of all the charge levelled against him.

22. Office is directed to communicate this order forthwith to the court concerned and to send back the lower court record to ensure compliance.