

(2004) 07 AHC CK 0194
In the Allahabad High Court
Case No : Criminal Appeal No. 3119 of 1981

Garibuddi alias Garibuddin, Nankae alias Nankeu and Bachen	APPELLANT
Vs	
The State of U.P.	RESPONDENT

Date of Decision : 22-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34, 354

Citation : (2004) 07 AHC CK 0194

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : G.S. Hajela, Syed Rahmatullah and S.R. Verma, for the Appellant;
A.K. Bhatt and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

K.K. Misra, J.—This Criminal appeal arises out of the Judgment and order dated 30.11.1981, passed by Sri U.S. Tripathi, the then VII Addl. Sessions Judge, Allahabad in Sessions Trial No. 317 of 1980, State v. Garibuddin and Ors. Conviction the appellants Garbuddin, Nankae and Bachen u/s 302 I.P.C. read with Section 34 I.P.C. and sentencing them to undergo imprisonment for life.

2. Briefly stated, the facts of the case as narrated in the F.I.R. are that in the night of 15/16.3.80, Ram Surat deceased resident of villange Salehpur P.S. karari, District Allahabad was sleeping in his house on a cot in the Chaupal near the northern door. His son Shanker Lal, P.W.I (Informant) was sleeping on another cot in the said Chaupal in the eastern portion A glowing lantern was hanging the said Chaupal. In the night at about 1.00 a.m. Garibuddin, Nankae and Bachen accused armed with axe, Pharse and Lathi respectively climbed clown the Aangan of Shankar Lal P.W.1 by scaling its boundary wall. When they jumped down Shankar Lal P.W.1 woke up hearing the sound and saw these three accused in his Aangan with the weapons, stated above. Seeing the accused armed with the weapons, Shankar Lal P.W.1 rushed towards north side, opened

northern door of the Chaupal and started shouting. On his cries, Ram Newaz P.W.2, Chhedi Lal P.W.3 and Nisar rushed towards his house fleshing their torches. When they reached the door of Shankar Lal P.W.1, they observed the accused inflicting injuries with their respective weapons upon Ram Surat deceased. On the alarm raised by the witnesses, the accused ran away towards north side, threatening Shankar Lal P.W.1 that though he escaped unharmed but he would not be spared in future. It is further stated in the F.I.R. that the first informant Shankar Lal P.W.1 had seen the accused in the light of lantern and other witnesses had seen the accused in the light of torches. After fleeing of the accused persons, the eyewitnesses went inside the house near Ram Surat and found him dead on the cot, profusely bleeding. Shankar Lal, P.W.1 went to the police station Karari situate at a distance of two miles from the place of occurrence on the night of 16.3.1980 itself and lodged the report of the incident at 1.30 p.m. by oral narration.

3. The investigation of the case was handed over to Sri Nagendra Bahadur .Sngh, I.O. P.W.4. He recorded the statement of Shankar Lal P.W.1 at the police station itself and thereafter proceeded to the place of occurrence. The inquest could not be conducted in the night for want of sufficient light. The Investigating Officer inspected the dead body of Ram Surat deceased and conducted inquest in the next morning. After preparing the inquest .report, the dead body with relevant papers was handed over to Constables Basdeo Singh, P.W.6 and Kamla Kant Pandey for being taken for post mortem examination. Thereafter, the Investigating Officer inspected the place of occurrence and prepared the site plan. He also took in possession the blood stained and simple earth from the spot. Thereafter, he recorded the statements of the witnesses Nisar and Ram Newaz. On 17.3.80, he recorded the statement of Chheddi Lal P.W.3. Thereafter the investigation of the case was taken over by the Station Officer Sri Bhullan Ram. After investigation, the charge sheet was submitted against the accused on 12.4.80.

4. Dr. M.A. Haq. P.W.5 conducted the post mortem examination on the dead body of the deceased on 17.3.80 at 4.00 P.M. and found the following ante mortem injuries on his person:

1. Lacerated wound 3-1/2"X1"X muscle deep above the chest in the neck on the right side.

2. Lacerated wound 2-1/2 "X1/2"X muscle deep present in the centre1 of neck on the right side.

5. The Doctor opined that the death had occurred due to shock and haemorrhage as a result of ante mortem injuries which were sufficient to cause oearn in ordinary course. The deceased was about 55 years of age and about 1-1/2 day had passed since he died.

6. At the trial, the accused appellants denied the prosecution allegations and claimed to be tried. The accused appellants in their statement recorded u/s 313

Cr.P.C. stated that they had been falsely implicated in the case due to enmity and party factions.

7. The prosecution examined seven witnesses in all at the trial. P.W.1 Shankar Lal is the son of deceased and is an eyewitness. Ram Newaz P.W.2 and Chhedi Lal P.W.3 are the other eyewitnesses. Sri Nagen a (sic) Singh, S.I. P.W. 5 conducted the post mortem examination over the dead body of the deceased. Constable Basudeo Singh P.W.6 had taken the dead body for post mortem examination and constable Bholenath Shukla P.W.7. was the Constable at the Police Station who registered the case on the basis of oral F.I.R. lodged by the informant.

8. The Trial Court found the case of prosecution against the accused appellants as proved beyond any doubt and convicted and sentenced them as above.

9. We have heard Sri G.S. Hajela, learned Counsel for the appellants and learned A.G.A. from the side of the State.

10. According to Shankar Lal P.W.1 accused Nankae and Bachen are real brothers and accused Nankae is the son-in-law of the accused Garibuddin. He deposed that there was long standing enmity between him and the accused appellants and a year before the (SIC) he had filed a criminal complaint against the reaped which was pending on the date of incident. On the date of incident, at about 1.00 a.m. in the night he was sleeping in the Chaupal which was situate in the northern portion of his house. His father Ram Surat deceased¹ was also sleeping in that Chaupal. A lantern was glowing in the Chaupal. The accused appellants Garibuddin, Nankae and Bachen jumped in the Aangan scaling the boundary wall. Hearing sound of jumping of the accused, he woke up and seeing them in the Aangan, he ran outside the house and raised an alarm on his alarm Chedi, Ram Newaz and Nisar came at his (SIC) torches. He and the witnesses saw that the accused were assaulting his father Surat deceased with Pharsa Lal and Kulhari,. There was Pharsa in the Hand of Nankae Kulhari in the hand of Garibuddin and Lathi in the hand of Bachen. On coming of these witnesses and the alarm raised by them, the accused fled away in the north direction threatening him that though he had escaped, but he would not be spared. He further deposed that they all had seen the accused appellants in the torchlight and lantern light. After fleeing away of the accused appellants, when he came near his father, he found him dead. He further deposed that Chaupal was covered with Khaparail and there were two doors in the Chaupal, one in the north direction and the other in the south opening in the Aangan. After Chaupal in the southern side, there is a room and thereafter there is Aangan. The way to the Aangan passes through Chaupal There was no door in the southern entrance but there was door in the northern entrance. He deposed that while going to bed he had closed the door of northern entrance. He heard the sound of the jumping of accused while sleeping on the cot and when he saw the accused, he; came out opening the northern door. He first saw the accused in front of the door in the Aangan. They were at 10 paces from the southern door. On the date of incident

no one was present in the house except him and his father. He further deposed that when he first saw the accused, they had covered their faces. Then he stated that their faces were open. Seeing them, he ran outside opening the door. He saw the accused assaulting his father from a distance of 20 paces in the torchlight.

11. P.W. 2 Ram Newaz was the resident of the same village. His house was situated at a distance of about 125 paces in the eastern side from the house of P.W.1 Shankar Lal. Two houses intervened between their houses. He deposed in his evidence that on the date of the incident at about 1 a.m., he was at his house when he heard the shouts of Shankar Lal P.W.1. He went at his door. Nissar and Chheddi also came there. He further deposed that he saw the accused appellants assaulting the deceased when they all shouted, the accused appellants fled away. at the time of retreating, the accused threatened to kill. Shankar Lal, P.W.1 also. He further deposed that he thereafter went to his house but before that he went near Ram (SIC)arat and found him lying dead. He further deposed that (SIC) the incident in the light of lantern and torch. He Emitted that a criminal case for teasing the girl of Garibuen was Deriding against him, Nisar and Rama Shankar. He went to his house after fifteen minutes of the incident. He further (SIC) that the assault on the deceased continued for (SIC) a minute. Four-six blows were dealt on Ram Surat (SIC) Pharsa, Kulhari and Lathi by the accused persons. He first described the weapon of Garibuddin as Pharsa. Then he changed it as axe and of Nankae and Bachen as Pharsa and Lathi respectively. He saw a bed sheet below the legs of the deceased. He saw no blood on the bed sheet but he saw blood on the ground and the cot. He further deposed that he saw the incident from a distance of 25 paces.

12. P.W.3 Chheddi Lal turned hostile and did not support the prosecution case.

13. Learned Counsel for the appellants argued that there was no light at the place of occurrence and it was not possible to recognize the assailants. Although it has come in the evidence of P.W.1 Shankar and P.W.2 Ram Newaz that in the light and torchlight they recognized the assailants but neither in the site plan, the place of lantern has been shown nor the Inve (SIC) Officer took in possession the lantern or torch. It is doubtful that there was sufficient light at the spot to facilitate (SIC) the recognition of the assailants by the witnesses. Moreover P.W.1 Shankar Lal has admitted in his evidence that when he first saw the accused persons in Aangan, they had covered their faces. No grappling had taken place. So, it was not possible that the faces of the assailants would have been uncovered during the incident. His improved state (SIC) in his next breath that the accused had only covered the (SIC) appeared to be an after thought. There is no evidence (SIC) effect either that the accused were hazardous (SIC) normally, known persons would not go to commit such a crime with open faces when night is chosen as the time of incident.

14. Learned Counsel for the appellants next submitted that the witnesses produced at the trial are not trustworthy and there being contradiction in their

(sic) it will not be safe to base conviction on their (sic) Shankar Lal admitted in his evidence that there was enmity between him and the accused persons for long Any (SIC) fore the date of incident, he had filed a co(SIC) the. accused persons which was pending till then. He further admitted in his evidence that when he first saw the accused persons, he came out opening the northern door. He further deposed that when the accused persons were assaulting his father, many persons of vicinity saw the incident from a distance of 20 paces in torchlight He deposed that the accused persons withdrew within two minutes after assaulting his father. It was not possible for P.W.2 Ram (SIC) to (SIC) we reached the place of occurrence after hearing (SIC) of P.W.1 Ram Shankar when it has come in the evidence of P.W.I Shankar Lal that the assault lasted for (SIC) minutes only whe eafter the accused persons retreated, It has also come on record that accused Garibuddin ru d lodged a report u/s 354 L.P.C against the .wrer eyewitnesses, In these circumstances, the evidence f these two witnesses does not inspire confidence. The pcssibnu of false implication of the accused-appellants could not b(SIC) cut.

15. There is also contradict(SIC) evidence of these witnesses with regard to the. Blood found at the place of occurrence. The investigating" officer found blood on the ground but not on the cot. He did hut lake into possession the cloth worn by the deceased .He specifically denied that there was any blood on the bed sheet found on the cot. It appears improbable that no blood on cot or bed sheet would have fallen, though the victim was sleeping on the cot when he was assaulted P.W. 1 Shanker Lal deposed that blood was found on the Kathri. P.W.2 Newaz deposed that there were no blood stains on the Kathri. It is thus rendered doubtful that the deceased was assaulted while sleeping on the cot as alleged by the prosecution.

16. Ram Newaz P.W.2 deposed that he saw the assault for a minute and within this span 4-6 Lathi Pharsa and Kulhari blows were given to the deceased. He also deposed that the distance between his house and that of informant was about 125 paces. He admitted that he saw the incident from a distance of about 25 paces in torchlight. Neither the Investigating Officer demanded torch from him nor he himself gave him the same. From the scrutiny of his evidence, we find that it was not possible for him to have seen the incident. It is also obvious that he is an inimical witness and cannot be termed to be independent at all.

17. P.W. 5 Dr. M. A. Haq who conducted the postmortem examination on the dead body of the deceased Ram Surat opined that injury No. 1 and 2 could be caused by blunt object like Lathi or very blunt object of iron. He found no injury of axe or. Pharsa on the body of the deceased. P.W. 1 Shanker Lal deposed that the accused assaulted the deceased indiscriminately with Pharsa, Lathi and axe . P.W. 2 Ram Newaz has also deposed that within a minute, 4-6 Pharsa, Lathi and Kulhari blows were given to the deceased. Thus, there is gross contradiction in the medical evidence and the version given by the eyealtnesses as regards the number of blows and the wampum"s is of the assault. The Doctor opined that the

injuries sustained by the deceased could not be caused by sharp-edged weapons. He further found semi-digested food in the stomach of the deceased, meaning thereby that he had taken food about an hour before his death. The incident is alleged to have taken place at 1.00 A.M. in the mid night, meaning thereby that he had taken food at 12.00 or at the most at 11.00 P.M. which was also very unnatural for a villages. It is common knowledge; that in villages people go to bed early after dinner.

18. P.W.I Shankar Lal had lodged a complaint against the accused persons. Garibuddin had also instituted a criminal complaint u/s 354 IPC against P.W.1 Shankar Lal, P.W.2 Ram Newaz and Nisar. The enmity between the parties is established. Enmity is a double-edged weapon. But in the present case the grudge could be on the part of the two eyewitnesses. Surprisingly, the accused persons left P.W.1 Shankar Lal untouched though the assailants were three in number and were armed with axe, Pharsa and Lathi.

19. In view of the discussions made above, we come to the conclusion that (1) there was no sufficient light at the place of occurrence; (2) the accused persons had covered their faces as admitted by P.W.1 Shankar Lal in his evidence; (3) there is conflict between the medical evidence and oral testimony and the injuries suffered by the deceased do not correspond to weapons used by the assailants; (4) there is contradiction in the evidence of witnesses -with regard to the exact place of incident and blood found on the spot; (5) in the circumstances of the case the presence of two eye witnesses at the place of occurrence becomes doubtful; and (6) enmity between the parties is established with grudge on the part of the eye witnesses.

20. Resultantly, the possibility of false implication of the accused is very much there. We are of the opinion that the accused appellants are entitled to get benefit of doubt and they deserve acquittal.

21. In the result, the appeal is allowed. The impugned order of conviction and sentence dated 30.11.1981 passed by the lower Court against the accused-appellants is set aside. The appellants are on bail. They need not surrender to their bail bonds. Sureties stand discharged.

22. Judgement be certified to the lower Court.