

(2004) 10 AHC CK 0180
In the Allahabad High Court
Case No : Criminal Appeal No. 1752 of 1981

Jagmohan Singh, Brij Raj Singh and Ramesh Singh (In Jail)	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2004) 10 AHC CK 0180

Hon'ble Judges : S.R. Alam, J; Mukteshwar Prasad, J

Bench : Division Bench

Advocate : V.P. Srivastava, D.P.S. Srivastava, V.P. Tripathi, Kamlesh Singh, V.K. Ojha, S.P.S. Rathore, K.K.S. Chauhan, G.P. Dikshit and P.S. Rathore, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Mukteshwar Prasad, J.—Four accused, Jagmohan, Brij Raj Singh, Sobran Singh and Ramesh Singh have filed this appeal against the judgment and order-dated 31.7.1981 passed by Sri Y.P. Singh, the then Sessions Judge, Etah in S.T. NO. 247 of 1980 whereby he convicted all the four accused under Sections 302/307 both read with Section 34 of the Penal Code and each of them was sentenced to suffer imprisonment for life and rigorous imprisonment for a term of three years respectively thereunder. Both the sentences were directed to run concurrently.

2. Appellant No. 2 Brij Raj Singh and Appellant No. 4, Ramesh Singh expired during pendency of the appeal.

3. In brief, the necessary facts of the case, as revealed from the record, are as under: -

4. One Bhagwan Singh and deceased (Prayag Singh) were brothers. Roop Singh son of Bhagwan Singh was married to Smt. Putti, who is sister of accused Sobran Singh and Ramesh. Accused Brij Raj Singh was brother-in-law (Behnoi) of Sobran

Singh and Ramesh. Roop Singh and his father Bhawan Singh died prior to the impugned incident. After their death, Smt. Putti developed illicit intimacy with accused Jagmohan, which was not liked by Prayag Singh and his wife Smt. Kamla Devi and they raised objection. On account of this resentment, all the four accused threatened Prayag Singh to teach him a lesson 3-4 days prior to his murder.

5. In the night intervening 13th /14th February, 1980 Prayag Singh and his wife Smt. Kamla Devi were sleeping in their Kotha where a lantern was burning. At about 1.00 A.M. Prayag Singh got up on hearing the cry of his she-goat. He asked his wife to get up and tie the goat. Smt. Kamla Devi got up and reached the door flashing her torch. When she opened door, she found four accused standing there, out of which Sobran and Brij Raj were carrying guns. Accused Jagmohan and Ramesh were having knives. They pushed her and trespassed into Kotha and pointed out their guns at Prayag Singh with a view to kill him. Accused Ramesh told that that the firing would create noise. After saying this, Ramesh and Jagmohan assaulted Prayag Singh and gave several knife blows to him. When Smt. Kamla Devi intervened, she was also attacked upon with knife and she sustained injuries on her forehead. Accused Sobaran and Brij Mohan caught hold her and she was assaulted with the butt of their guns. Jagmohan and Ramesh continued their attack with knives. On the alarm raised by Smt. Kamla Devi and her husband, Jagpal, Sheo Mangal and others arrived there flashing their torches.

6. After killing Prayag, all the accused escaped by climbing the roof through the staircase. Prayag Singh succumbed to his injuries on the spot. Smt. Kamla Devi also sustained several injuries.

7. Smt. Kamla Devi prepared a report of the incident and sent it to the Police Station through her nephew Jagpal. A case was registered at the Police Station Aliganj at Crime No, 94 under Sections 302/307 I.P.C. at 8 a.m. on 14.2.1980 and an entry was made in the G.D.

8. After registration of the case, the case was investigated as usual by the Sub Inspector Mewa Ram Lakhoria (PW 5). He reached the scene of occurrence along with S.I. Sheo Kumar and found the dead body lying there. The inquest report and other papers were prepared by S.I. Sheo Kumar. Blood stained earth was also collected and broken pieces of bangles were also taken into custody. Fard was also prepared. The Investigating Officer prepared a site plan on the same day.

9. Smt. Kamla Devi was medically examined at Primary Health Centre, Jaithara on 14.2.1980 at 6.10 p.m. by Dr. Lajja Ram Singh (PW 4). The doctor found the following injuries on her person: -

1. Incised wound 3 cm. x 12 cm. x .5 cm. on the right side of forehead, 4 cm. from right-brow, margins clean, clotted blood around the wound, obliquity placed.

2. Incised wound 3 cm. x .2 cm. x .6 cm. over the side of the forehead 5.5. cm. from right eye-brow, margins clean cut, clotted blood around th wound. One edge adherent to injury No. 1 obliquely placed, other end 2 cm. away from injury No. 1.

3. Traumatic swelling 3 cm. in diameter around the scalp in occipital region 10 cm. from left ear.

4. Abrasion with contusion 5 cm. x 2 cm. in size on the left side of left-hand, scabbed, 3 cm. from xytphisroid process.

5. Bruise 10 cm. x 6 cm. in size on the back of right scapula, pinkish in colour, transversely placed.

6. Bruise 10 cm. x 4 cm. on point of left scapula, pinkish In colour, obliquely placed.

7. Bruise with contusion 12 cm. x 7 cm. on the left shoulder and upper left arm, obliquely placed.

8. Abrasion 2 cm. in diameter over the right knee, scabbed.

10. In the opinion of doctor, injuries Nos. 1 and 2 were caused by knife and remaining injuries could be caused by the butt of the gun arid were about 18 to 24 hours old at the time of examination. The dead body of Prayag Singh was sent for post-mortem examination through Constables Gokul Singh and Suresh Chandra.

11. On 15.2.1980 at 4.00 p.m. PW 2 Dr. R.P. Dixit, Medical Officer, District Hospital, Etah conducted post mortem examination on dead body of Prayag Singh aged about 55 years and in the opinion of the doctor about one and half days had elapsed since death. Rigor mortis was found present in both upper and lower limbs. Dr. Dixit found the following ante-mortem injuries: -

1. incised wound 3 cm. x 1 cm. x muscle deep, vertically placed on the left inguinal region.

2. Three Incised wounds 3 cm. x 1 cm. each, two on the left side lower part of chest, 10 cm. below the nipple at 1 cm, distance and the third on the outer side of abdomen vertically placed x cavity deep directed backwards and laterally.

3. Three incised wounds 2 cm. x $\frac{1}{2}$ cm. x skin deep on the anterior axillary fold in an area of 5 cm. x 4 cm. left side.

4. Multiple incised wounds all round the left arm vertically placed.

5. Incised wound 1 cm. x $\frac{1}{2}$ cm. x tissue deep on the right side front of chest 5 cm. above the right nipple.

6. Incised wound 1 cm. x 1 cm. x muscle deep on the front of right abdomen at the level of umbilicus, 10 crn, away from umbilicus.

7. Incised wound 1/2 cm. x 1 1/4 cm. x skin deep on the base of right thinner eminence of hand.
8. Incised wound 2 cm. x 1 cm. x cavity deep on the back of left chest lower part.
9. Two Incised wounds 1/2 cm. x 1/2 cm. each at a distance of 2 cm. from each other (right loin) skin deep
10. Incised wound 1 cm. x 1/2 cm. x skin deep on the back of right upper part.
11. Incised wound 2 cm. x 1 cm. x muscle deep in the vacant space between right index and middle finger.
12. Incised wound 1 cm. x 2 cm. x scalp deep, 6 cm. above the left ear.
12. On internal examination, the abdominal cavity was found filled with clotted blood and stomach contained semi-liquid digested food. Small intestine was empty and large intestine was filled with faecal matter and gases. In the opinion of the doctor, death was caused due to shock and hemorrhage resulting from the ante-mortem injury Nos. 2 and 8.
13. After completing the investigation, the Investigating Officer submitted charge sheet against all the four assailants named in the First Information Report.
14. All the four accused were charged under Sections 302 and 307 both read with Section 34 of the Penal Code on 15.9.1980 to which they pleaded not guilty.
15. At the trial, the prosecution examined five witnesses in all, including Smt. Kamla Devi (PW 1) wife of deceased and an injured. Dr. R.P. Dixit (PW 2) was examined to prove the post mortem examination report. PW 3 Gokul Singh accompanied by Constable Suresh Chandra took the dead-body of Prayag Singh to mortuary. PW 4 Dr. Lajja Ram had examined the injuries of Smt. Kamla Devi at Primary Health Centre Jaithara on 14.2.1980 and PW 5 Mewa Lal Lakhoria, as the investigating Officer of the case.
16. Both Jagmohan Singh and Sobran totally denied their complicity in the alleged crime and pleaded their false implication in the case on account of enmity. Accused Sobaran Singh pleaded that Bhagwan Singh, father in law of Smt. Putti had given land to her and she and others used to supervise the cultivation, therefore, deceased and other members of family were annoyed. Jagmohan asserted that he used to sit with co-accused Ramesh and other and as such, he was falsely implicated. No evidence was led in defence.
17. After having examined the entire oral as well as documentary evidence led by the prosecution and arguments advanced on behalf of the parties, learned trial Judge found the testimony of Smt. Kamla Devi wholly reliable and all the four assailants were found guilty, convicted and sentenced, as mentioned above.
18. When the appellants' counsel through whom the appeal was filed did not appear, this Court vide order dated 12.5.2004 appointed Sri V.P. Tripathi, Advocate to appear for the appellants as Amicus Curiae, We accordingly heard

Sri V.P. Tripathi, learned Amicus Curiae for appellants, (Jagmohan and Sobaran) and learned A.G.A. for the State and perused the record carefully.

19. Learned Amicus Curie assailed the judgment under appeal mainly on the grounds that inordinate delay took place in lodging of the F.I.R. at the Police Station and F.I.R. is a fabricated document which was prepared after consultation. Dr. Lajja Ram found no injury on the abdomen of the lady as asserted by her and there is inconsistency in the medical evidence and oral testimony. It was also contended vehemently that a rifle was lying there on the cot of the deceased. He, however, did not use the weapon in self-defence and there is no explanation on record for this lapse on the part of the deceased. Moreover, learned Judge erred in placing reliance on the uncorroborated testimony of the wife of the deceased and no independent witness came forward to support the prosecution version.

20. On the other hand, learned A.G.A. has supported the finding recorded by the court below and submitted that learned Judge has committed no illegality or error in appraisal of the evidence led by the prosecution and rightly concluded that all the four assailants in furtherance of their common intention committed murder of Prayag Singh and made murderous assault on his wife on the impugned night. Consequently, the appeal is liable to be dismissed.

21. We have given our anxious consideration to the entire submissions made by the parties and scanned the evidence carefully. We are clearly of the opinion that this appeal is devoid of merit and is liable to be dismissed.

22. Normally, there is a motive behind every criminal act. However, this does not mean that where prosecution has failed to prove motive, the offender cannot be convicted. In other words, motive is not a sine qua-non for commission of a crime. In the instant case, it was alleged in the written report itself that after the death of her husband Smt, Putti sister of Sobaran Singh developed illicit intimacy with co-accused Jagmohan which was objected to by the deceased and his wife. Smt. Putti too expressed her resentment. Consequently, Sobaran and Ramesh as well as Jagmohan had threatened the deceased to kill him 3-4 days prior to his murder. At the trial, Smt. Kamla Devi who is wife of the deceased stated categorically that all the accused facing trial had threatened her husband 3-4 days prior to the impugned incident. It is, therefore, obvious that the accused had a motive to commit murder of Prayag Singh and his wife. Besides, it is admitted between the parties that Bhagwan Singh (father-in-law of Smt. Putti) had executed a sale deed of his land in favour of Smt. Putti about 10 years prior to the incident in question and cultivation of the plot was looked after by Sobaran and Ramesh. According to the defence, the cultivation by the brothers of Smt. Putti was not liked by the deceased and his wife and as such, they were falsely implicated in the case. Smt. Kamla Devi totally denied that they were jealous to the cultivation of the plot of Smt. Putti by her brothers. She further disclosed in clear words that she had no issue and as such, she had no concern with the agricultural holdings of Smt. Putti. The prosecution came to the court on the

basis of direct evidence of Smt. Kamla Devi and as such, the question of motive in this case does not have much significance.

23. As indicated above, the prosecution examined Smt. Kamla Devi to prove the complicity of the appellant and others in the crime in question. She fully supported the prosecution version, as mentioned in her report dated 14.2.1980 and stated categorically that on the impugned night she was also sleeping in the same Kotha in which her husband was sleeping. According to her, deceased after hearing the cry of she-goat woke up and asked her to go and tie the she-goat. The incident took place at about 1.00 a.m. When she flashed torch and opened the door, she found both the appellants and Brij Raj Singh and Ramesh Singh standing there armed with guns and knives. She further supported the prosecution story and testified that Jagmohan and Ramesh gave several knives blows to her husband and caused a number of injuries on different parts of his body and as a result of injuries, Prayag Singh died on the spot. The lady further disclosed that on her intervention, she was also attacked upon with knives and butt of the guns, which was being carried by Sobaran and Brij Raj Singh. The lady was cross examined extensively and effectively by the learned counsel appearing for the appellants but in our view, she withstood the test of cross examination and her testimony could not be shaken at all. In our opinion, nothing material could be elicited in her cross-examination to show that she has not spoken truth. It is noteworthy that the lady sustained two incised wounds on her forehead, three abrasions and two abraded contusions on different parts of her body, which were caused by knives and butt of the gun. Taking into consideration, the number, nature and seat of injuries, it is not at all possible to conclude that the injuries were manufactured or self-suffered by the wife of the deceased with a view to falsely implicate the appellants. Dr. Lajja Ram (P.W. 4) had examined the injuries of Smt. Kamla Devi next day and found as many as eight injuries on her body including two injuries which were caused by knives. The lady was admittedly sleeping in the same Kotha and was present throughout at the time of incident and saw the incident. She too sustained injuries in the course of same incident in which her husband was done to death. We have no reason to doubt her presence at the scene of occurrence. Therefore, in our opinion, the presence of the lady at the scene of occurrence has been proved by convincing evidence. In view of her clear and direct testimony coupled with medical evidence on record, we can safely hold that the lady was also assaulted and given knives blow by the appellants and his companions on the fateful night. Learned counsel appearing for the accused appellants could not succeed in showing that the injuries found by the doctor on the person of lady were caused at some unknown place by unidentified assailants. Therefore, on the strength of evidence and material on record, we conclude that Smt. Kamla Devi was all alone present at the scene of incident and she saw the assailants committing the crime in question in furtherance of their common intention. We are also of the clear view that the appellants clearly intended to kill the wife of the deceased also but on account of hue and cry raised by the deceased and his wife and arrival of

witnesses flashing their torches, the assailants escaped through the staircase and did not succeed in causing her death.

24. It was pointed out by the learned Amicus Curie that the lady claimed that she was given a knife blow on her abdomen also but Medical Officer found no knife injury on her abdomen. No doubt, Dr. Lajja Ram (P.W. 4) found no knife injury on her abdomen and there is minor contradiction on this point in the oral evidence and medical evidence. However, we find that this contradiction is very minor and this discrepancy between the ocular testimony and medical evidence has not shaken and does not weaken the prosecution case. This contradiction cannot be said to be material and as such, it has no significance.

25. Learned counsel for the appellants has urged with vehemence that inordinate delay took place in lodging the F.I.R. which was lodged on the next day at 8.00 a.m. i.e. after seven hours of incident and the F.I.R. is a fabricated document and as such, the prosecution case is not believable. We find that this contention of the appellants' counsel has no legs to stand and cannot be accepted. First of all, it may be mentioned that it was winter's night and informant's husband was murdered before her eyes. She must have been disturbed after the incident and as such, it was not possible for her or any body to prepare a report or dictate any report to any one regarding this incident. In the instant case, the lady herself prepared a written report and sent to the Police Station through her husband's nephew. Considering the distance of the Police Station from the village in question, which is 18 kms, we find no force in the submission that there was delay in reporting the incident to the police. The person who went to lodge the report covered the distance on foot. In this view of the matter, it is not possible to infer that in fact, delay took place in lodging the report or report was fabricated. Since the report was prepared by the injured herself, who is wife of the deceased also and eyewitness, there was no question of fabrication or consultation. There is nothing in the cross-examination of the lady as to who was consulted by Smt. Kamla Devi before lodging the F.I.R.

26. It was next urged, on behalf of the appellants that a rifle was lying on the cot on which the deceased was sleeping. He, however, did not use the weapon in his self-defence. This circumstance further falsifies the prosecution version. P.W. 5 Mewa Ram Lakhoria, Investigating Officer of the case testified in his cross-examination that the rifle of the deceased was found tied with a cot on which he was sleeping. He took rifle in custody and had given a receipt to the informant. It may be mentioned that Investigating Officer was not cross examined on the point as to whether deceased had a license of rifle and the weapon was loaded at that time. Moreover, he was not questioned as to whether the deceased got an opportunity to use the weapon in defending himself. In my opinion, in the absence of any cross-examination on this point, the aforesaid statement of the Investigating Officer does not help the appellants in any manner.

27. Lastly, it was contended that the trial court convicted the appellants on the solitary testimony of Smt. Kamla Devi, who happened to be wife of the deceased

and she was a highly interested witness. It is true that Smt, Kamla Devi is wife of the deceased and as such, she was an interested witness. However, we have observed above that there is no reason to doubt her presence at all at the scene of incident. Moreover, she too sustained several injuries in the course of incident, which were caused in the night in question. Further, it is well settled that a finding of conviction may be recorded on the basis of solitary testimony of a witness provided his / her testimony is found to be trustworthy and aboveboard. In the instant case, the trial court categorized Smt. Kamla Devi as wholly reliable witness. There is no valid reason to take a different view on this point. Our evidence Act does not insist on plurality of the witnesses. Section 134 of the Evidence Act gives green signal to the courts to convict an offender on the basis of sole testimony provided the witness comes in the category of wholly reliable witness. The Apex Court of the country held In the case of Balwant Singh Vs. State of Haryana, that mere fact that the injured witness is related to the deceased would not be a sufficient ground for discrediting his/her testimony. It is also most difficult to believe that the injured witness would spare the real culprit and would falsely involve the innocent persons. What is required under the law is that the testimony of such witnesses is to be scrutinized with circumspection and care, which we have done in this case.

28. In view of our foregoing discussion, scrutiny and analysis of the evidence and other material on record, including the medical evidence, we hold that the learned Judge committed no error or illegality in appraisal of the evidence led by the prosecution and rightly concluded that the appellants along with two others (now dead) committed murder of Prayag Singh and made an attempt to commit murder of his wife Smt. Kamla Devi on the fateful night in furtherance of their common intention. Consequently, we hold that this appeal lacks merit and is liable to be dismissed.

29. In the result, this appeal fails and is hereby dismissed. The conviction and sentence recorded against both the appellants (Jagmohan and Sobaran) under Sections 302 and 307 both read with Section 34 of the Penal Code are hereby affirmed. Both the sentences are directed to run concurrently.

30. Both the appellants are in jail. They are directed to serve out the sentence awarded to them.

31. Let a copy of this judgment along with lower court record be transmitted to the court concerned for necessary compliance of the order. The compliance report be submitted to this Court within two months from the date of receipt of the judgment.