

(2003) 03 AHC CK 0040
In the Allahabad High Court
Case No : Criminal Appeal No. 2389 of 1980

Kalloo and Others (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 34

Citation : (2003) CriLJ 4113

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

Bench : Division Bench

Advocate : Krishna Raj Singh, for the Appellant; Shekhar Yadav, A.G.A., for the Respondent

Judgement

K.N. Ojha, J.—The appeal is preferred by Kalloo, Dalchand and Ram Pal of village Gunah Hatto, P.S., Deorania, district Bareilly against the judgment and order dated 13-10-1980 passed by Shri Ramji Lal, IV Additional Sessions Judge, Bareilly in Sessions Trial No. 82 of 1980 convicting and sentence appellant Kalloo to life imprisonment u/s 302 read with Section 34, I.P.C. and four years rigorous imprisonment u/s 307/34, IPC. Accused appellant-Dalchand is convicted u/s 302 and 307/34, I.P.C. and sentenced to undergo life imprisonment and 4 years rigorous imprisonment respectively. Accused Rain Pal is convicted u/s 302 read with Section 34, I.P.C. and Section 307, I.P.C. and sentenced to undergo life imprisonment and 4 years rigorous imprisonment respectively. Sentences of all the appellants on these charges have to run concurrently.

2. During the pendency of the appeal, appellant Kalloo died, hence the case against him stands abated.

3. We have heard Sri Krishna Raj Singh, learned counsel for the appellants and Shri Shekhar Yadav, learned Additional Government Advocate and have gone through the record.

4. According to prosecution the occurrence did take place on 31 -10-1979 at

about sun set. F.I.R. was lodged against the appellants by Dwarka Prasad P.W. 3 in the same night at 9.30 p.m. at police station, Deorania, district Bareilly which is about 2 miles from the place of occurrence.

5. According to prosecution, Pooran Lal was brother of Dwarka Prasad. Both parties reside in village Gunah Hatto, P.S., Deorania, district Bareilly, At about sun set. on 31-10-1979 Dwarka Prasad along with Pooran Lal was managing paddy at his door which in front of the house of appellants. Pappu, son of Ramcharan aged about 10 years appeared there and kicked the heap of paddy lying there. Wife of Pooran Lal, rebuked him. On his complaint to his mother, his mother Smt. Kalawati came there and started to abuse Smt, Bhanmati, wife of Pooran Lal. Objection was raised by Smt, Bhanmati, During exchange of hot, talk, witnesses Ramcharan and Shanker Lal reached there, Meanwhile son of Pooran Lal also reached there, Appellant Kalloo caught hold of Pooran Lal and his son Dalchand pierced his spear on left side shoulder of Pooran Lal who after receiving injury fell down on the ground, When Ram Murti ran to the rescue of Pooran Lal, appellant Ram Pal struck Kanta on his neck from behind, He also fell down on the ground, Appellant ran away. Injured Pooran Lal and Ram Murti were brought to the police station where Pooran Lal succumbed to his injuries.

6. After the F.I.R. was lodged by Dwarka Prasad at the police station, Station Officer, S.R. Pandey started investigation, took sample of blood stained pieces of Kathri, quilt cot string, recorded statements of witnesses Dwarka Prasad, Asha Ram and Shanker Lal, prepared site plan, recovered blood stained Angochha from the spot and arrested Kalloo.

7. P.W. 6 Dr. M.C. Sharma conducted post: mortem examination on dead body of Pooran Lal on 1-11-1979 at 3.15 pm. and he found the deceased was aged about 45 years. Following ante-mortem injury was found on his body.

1. A transverse punctured wound 5 cm x 2 cm x chest cavity deep, on mid-scapular region on left side of back of chest.

On Internal examination he found 4th rib cut posteriorly on back of left side. Pleura was punctured under left side and full of blood, Left lung was cut through and through upper lobe and left ventricle of heart was also cut. About 100 grams of semi digested food was present in the stomach. In the opinion of the Doctor, death was, due to shock and haemorrhage resulting through ante-mortem injuries.

8. P.W. 4, Dr. Hamidullah examined injuries of Ram Murti on 31-10-1979 at 11.25 p.m. and following injuries were found:

1. Incised wound 7 cm. x 4 cm. x under observation on back of right side of neck, near midline. Clot of blood present over the wound.

2. incised wound 2 cm x 1 cm,, x under observation on right side neck 8 cm. below right ear.

9. In the opinion of the Doctor, injuries were inflicted through some sharp edged weapon like Kanta and they were quite fresh and could be inflicted at about 5-6 p.m.

10. The accused-appellants denied their participation in the crime and it was alleged that Kalloo was not present at the time of occurrence, Complainant bore grudge against them because they are in majority in the village, Dalchand stated u/s 318, Cr.P.C. that on the date of occurrence Pooran, Komil, Mohan Lal, Madan Lal mid Sia Ram had entered In his house armed with spear, lathi, knife, Daranti and surrounded (hem, It was a dark night. They caused injuries to them with lathis. It is also alleged that these persons were attacking Dalchand after entering into his house and he plied his own lathi in self defence hence injury did take place. Therefore accused appellants cannot be held aggressors.

11. Prosecution examined P.W. 1 Ram Murti, P.W. 2 Shanker Singh. P.W. 3 Dwarka Prasad, P.W. 4 Dr. Hamidullah, P.W. 5 Station Officer S.R. Pandey, P.W. 6, Dr. M.C. Sharma and accused examined D.W, 1 Pappu in their defence. It is occurrence of 31-10-1979 at about sun-set at the place between the house of deceased and informant on one hand and the appellants on the other. There is evidence of witnesses P.W. 1 Ram Murti, son of deceased Pooran Lal, P.W. 2 Shanker Singh, resident of the same village Guna Hatto who lives in the same vicinity of the village, who reached the spot on hearing of the exchange of hot talk between the ladies and P.W. 3 Dwarka Prasad, informant and eye-witnesses of the occurrence. The statement of these three eye-witnesses is consistent and their presence on the spot is natural. They have stated that exchange of hot talk had taken place when Pappu, aged about 10 years went to his house and made complaint against Pooran Lal and his wife Bhanmati. His mother Smt. Kalawati carne, started abusing Srnt. Bhanmati. Thereafter Kalloo caught hold of Pooran Lal and Dalchand pierced spear from back side of his shoulder, who after receiving injuries fell down on the ground. Meanwhile, accused Ram Pal struck Kanta on his neck from behind. The occurrence was seen by witnesses Ram Murti and Shanker Lal. Three eye-witnesses were cross-examined at length and their presence on the spot cannot be doubted, Dwarka Prasad is the witness who lodged F.I.R promptly on the same day on 31-10-1979 at 9.30 p.m. while occurrence took place In the evening of 31-10-1979, Had he not been present on the spot, he would not have been able to travel 2 miles to lodge F.I.R, Immediately at police station against the appellants, If Ram Murti would not have been present on the spot, he would not have received two incised wounds on right side of his neck, Presence of P.W. 2 Shanker Singh is natural as exchange of hot talk attracted him to reach the spot because he lives in the same vicinity, Thus statements of these witnesses have been rightly believed by the Additional Sessions Judge that Dalchand committed murder of Pooran Lal and Ram Pal caused in-Jury to Ram Murti with Karita and. Kalloo caught hold of Pooran Lal. Post-mortem examination report of Pooran Lal aged about 45 years shows that his death was due to shock and haemorrhage. P.W. 6 Dr. H.C. Sharma, who performed autopsy on the dead body of Pooran Lal has stated that, death of

Pooran Lal was due to punctured wound which was caused chest cavity deep. Thus, from the statement of witnesses it is proved that in furtherance of common intention of the three accused Dalchand pierced spear committing murder of Pooran Lal.

12. Learned counsel for the appellants submits that occurrence did take place at the door of the appellant-Dalchand and even if it is taken that injury was caused to Pooran Lal it was in self defence because Pooran Lal and his party is in majority in the village who entered in his house with deadly weapons like lathi spear and knife. A perusal of the statement of witnesses and the site plan prepared by the Investigating Officer shows that the house of the parties are adjoining to each other. The place of occurrence is the place where paddy crop was being managed and it is situated between the residence of the complainant and appellants. The statement of witnesses also shows that appellant Kalloo got hold of Pooran Lal. Pooran Lal was dragged by the appellants towards their room and Dalchand pierced Ballam in the chest of Pooran Lal. When the doors of the parties are in front of each other and the appellants dragged Pooran Lal towards their door, merely on this basis the prosecution story cannot be doubted; The dispute started from the door of the deceased and from the place paddy crop was being managed, cannot be disbelieved. If a large number of persons including informant Dwarka Prasad and deceased Pooran Lal along with others would have surrounded the house of the appellants or would have entered the house cause injuries, injuries would have been caused on the side of the appellants. DW 1 Pappu has been examined by the accused, He is aged about 10 years and has stated that there is a narrow lane between the house of the parties, He has also stated that when Dalchand and Ram Pal were taking meal, Sia Ram, Pooran Lal, Ram Murti, Mohan Lal, Madan Lal and Dwarka Prasad with lathi, spear, knife and Kanta came and entered in his house and Ram Murti caused injuries with knife to Ram Pal. DW 2 has proved injury report of Ram Pal, which is Ex. Kha 1. In injury report it is mentioned that incised wound 3 cm x 2 cm. x muscle deep was seen over dorsum of right hand. There is no other injury on his body or on body of any other member of his family. If such large number of persons with deadly weapons would have entered into his house and injuries would have been caused, merely one injury would not have taken place on the hand of appellant Ram Pal hence this injury does not entitle the appellants to commit murder of Pooran Lal. It does not confer right on Dalchand to pierce spear into the chest of Pooran Lal. The role of the party as who was aggressor cannot be decided by the place where blood was found because it is specific evidence of the witnesses that Ram Murti was dragged and injuries were caused near the door of the appellants. Thus the circumstances, the statements of the prosecution witnesses, injury on the hand of Dalchand, statement of defence witnesses speak only one circumstance that Dalchand pierced spear into the chest of Pooran Lal resulting into his death and injuries were caused to Ram Murti on his neck, with common intention.

13. The parties are of the same place. Dispute started from a child who went and

made complaint to his mother that he was scolded by the wife of the deceased, exchange of hot talk did take place and thereafter injuries were caused. It cannot be believed that some person came in dark hour of night and committed murder and real culprit could not be known.

14. It has been submitted by the learned counsel for the appellants that P.W. 1 Ram Murti Lal, son of Pooran Lal has stated that Dalchand caused injuries on the back of his father Pooran Lal with spear. A transverse punctured wound 5 cm x 2 cm x chest cavity deep was caused to Pooran Lal. The statements of witnesses show that when exchange of hot talk was taking place between Smt. Bhanmati and Smt. Kalawati, Pooran Lal went there and started to scold them as why they were fighting on the complaint of the child. In the meantime accused came there and Kalloo, co-accused caught hold of him and dragged him towards his door.

When Pooran Lal was in such mobile position, if spear was caused from back side or on left side and spear pierced into chest, while Pooran Lal was trying to get himself freed from the clutches of appellant Kalloo, there appears no contradiction in the statement of the witnesses and ante mortem injury mentioned in post mortem examination report.

15. It is said that Ram Pal was minor on the date of the occurrence, which was written 18 years in the statement made u/s 313, Cr.P.C. In statement u/s 313, it is not alleged that any of the appellant was minor on the date of the occurrence. In cross-examination of the witnesses also it is not alleged that any of the appellant was minor when the offence was committed. Therefore it is held that Dalchand and Ram Pal were major on the date of occurrence. In furtherance of their common intention Kalloo caught hold of Pooran Lal, Dalchand committed murder by piercing spear into his chest and Ram Pal caused injuries to Ram Murti Lal causing two incised wounds on his neck with common intention to commit murder.

16. We subscribe to the view of learned Additional Sessions Judge hence instance appeal fails.

17. Appeal of Kalloo stands abated as he has died. Appeal of Dalchand and Ram Pal is dismissed. They are on bail. Their bail is cancelled. They be got arrested and sent to jail to serve out the sentences.

18. Let a copy of the judgment along with the record be sent down to the Court below for compliance and report to this Court within two months.