
(2003) 11 AHC CK 0017
In the Allahabad High Court
Case No : Criminal Appeal No. 3040 of 1981

Kapil Deo Singh and Others (In Jail) APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 201, 302

Citation : (2004) 1 ACR 330

Hon'ble Judges : Onkareshwar Bhatt, J;M.C. Jain, J

Bench : Division Bench

Advocate : Gopal Chaturvedi, V.K. Verma, A.K. Verma, Rakesh Verma, R.K. Shukla, M.S. Yadav and Samit Gopal, for the Appellant; A.K. Awasthi, V.C. Tiwari and M.C. Joshi and Manish Tiwari, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Onkareshwar Bhatt, J.—Appellants Kapil Deo Singh and five others were tried and convicted in Sessions Trial No. 43 of 1980 vide judgment and order dated 21.11.1981, passed by the then VII Ith Additional Sessions Judge, Azamgarh. They have been sentenced to undergo rigorous imprisonment for one year u/s 147, I.P.C. to imprisonment for life u/s 302/149, I.P.C. and three years rigorous imprisonment u/s 201, I.P.C.

2. Sri Gopal Chaturvedi, Senior Advocate, assisted by Sri Samit Gopal, learned Counsel for the Appellants, Sri V. C. Tiwari, Senior Advocate appearing for the complainant and Sri M. C. Joshi, learned A.G.A. appearing for the State have been heard and record of the case has been carefully perused.

3. Appellant No. 1 Kapil Deo Singh died and appeal abated so far as he was concerned vide order dated 28.10.2003.

4. Deceased of this case is Sarvan Singh, brother of Harivans Singh P.W. 2. They were original residents of Sarbaspur and had come to live in village Karanpur. The deceased worked as Muneem on the sand excavation site in village Deoo.

The deceased lived at the excavation site and used to come in the morning and evening for taking food at his house in village Karanpur. The deceased was notorious and womanizer. He had illicit relations with Lalti, daughter of accused Ram Janam. During the time of occurrence, the deceased was having illicit relationship with Mankiya P.W. 1, daughter of accused Lurkhur, Mankiya was residing in southern portion of the house of accused Lurkhur and the deceased used to visit Mankiya on second or third day. In the night of 4/5.8.1978 the deceased was brutally assaulted in the portion of the house where Mankiya was living. On 5.8.1978, the dead body of the deceased was found at 6 p.m. in well of Ram Nath in village Karanpur and was taken out by Bal Chand P.W. 8 from the well. Thereafter, Harivans Singh lodged written report of the occurrence of 6.8.1978 at 5.30 a.m. at police station Jeeanpur. After completion of the investigation charge-sheet was submitted against the accused persons.

5. Brutal assault on the deceased took place in southern portion of the house of accused Lurkhur, which was in occupation of Smt. Mankiya P.W. 1, is not open to doubt. During the investigation blood stains were found on the floor, cot and bamboo. The assault on the deceased took place while he was sleeping along with Mankiya on the same cot. Mankiya stated that she was sleeping on the cot when some time during the night the deceased came and slept with her on that very cot. According to Mankiya some time after she slept, some persons came and killed the deceased and carried him away. She stated that she could not recognise any of the assailants because they had tied her mouth and eyes. The testimony of Mankiya shows that in the night of 4/5.8.1979, the deceased was alive and was in the company of Mankiya.

6. Harivans Singh P.W. 2 stated that all the accused for one reason or the other were inimically disposed towards the deceased. He stated that it is correct that with all the accused and their family members there was enmity with his family. The witness also stated about the notorious character of his brother, deceased, and admitted that the deceased was involved in two cases of dacoity. He also stated that the deceased was a drunkard and was womanizer and was having illicit relations with Lalti and Mankiya who were married ladies. Harivans Singh has stated that on 5.8.1978, accused Lurkhur came to his house, waited for some time and thereafter the deceased, who had his dinner, left in the company of the accused at 8 p.m. P.W. 3 Ram Uchhah Singh who was returning to his village Sarbaspur and while he was passing through village Karanpur, when Chandrika also met him, saw the deceased followed by accused Lurkhur going towards Harijan Basti at 8.30 p.m. Chandrika Singh went to ease and Ram Uchhah Singh waited. When Chandrika Singh returned after easing and when both of them were ready to proceed, they saw the other accused coming from the side of village Karanpur and saw them proceeding towards Harijan Basti of accused Lurkhur. Rishikesh Upadhyay P.W. 4 has his house in village Karanpur and his furniture shop is at Machharaha in Azamgarh. He was returning at about 8 p.m. and at octroi one Chanari Singh met him. Both of them came by taxi to Jeeanpur market. Thereafter by rickshaw they reached Sikanderpur at 11 p.m.

From Sikanderpur both of them started on foot and when they reached near the well of Ram Nath they heard noise of some persons. The witness flashed his torch and saw all the six accused. Whereafter all the accused turned towards north and went away. On the following night when the witness was returning again to his village he saw the dead body of the deceased near the well of Ram Nath.

7. In the written report P.W. 2 Harivans Singh had not mentioned that accused Lurkhur came to his house and deceased left the house in the company of accused Lurkhur at 8.30 p.m. Ram Uchhah Singh P.W. 3 saw the deceased in the company of accused Lurkhur at 8.30 p.m. and other accused persons were seen going towards the house of Lurkhur after some time. The time was around about 8.30 p.m. According to Rishikesh Upadhyay P.W. 4, the accused persons were seen near the well of Ram Nath around about 11.30 or 12 in the night. In the first information report it has been mentioned that the deceased went to the house of Mankiya at about 11 or 12 in the night. As stated above, it was Mankiya with whom the deceased was sleeping in the night of the occurrence. This shows that the deceased was alive when he was in the company of Mankiya P.W. 1 at her house. In the above context, the statements of Ram Uchhah Singh and Rishikesh Upadhyay are not very relevant because the deceased went to the house of Mankiya at about 11 or 12 in the night and was alive till then. Mankiya was blind folded by the miscreants and she could not see any of the assailants who had caused eight punctured wounds, two penetrating wounds and one incised wound on various parts of the body of the deceased with extensive internal damage also. The testimony of Mankiya does not connect any of the accused persons with the murder of the deceased although she claimed to be present at that time. The presence of blood at her house, no doubt, shows that murderous assault had taken place at her house which was in her exclusive occupation but nothing more is proved. Rishikesh Upadhyay felt no suspicion when he saw the accused persons standing near the well of Ram Nath. He flashed his torch thrice and in the light of torch he had allegedly seen the accused persons. It was rainy season and night was dark. The witness had no talks with the accused persons. When the dead body of the deceased was taken out, Rishikesh Upadhyay is alleged to have told the informant as to what he had seen. However, in the written report it is not mentioned that Rishikesh Upadhyay saw the accused persons near the well of Ram Nath on the previous night at about 11.30 or 12.00 O'clock. The testimony of Rishikesh Upadhyay that he saw the accused persons near the well of Ramnath during the night at 11.30 or 12 does not inspire confidence due to two reasons ; firstly, that this fact is not mentioned in the written report, and secondly, that the allegation in the written report shows that the deceased was at the house of Mankiya at 11 or 12 in the night. There is no evidence that the accused Appellants were seen coming out from the house of Mankiya and proceeding towards well of Ram Nath carrying any bundle with them. The evidence adduced in this case is not such that on every reasonable hypothesis the conclusion must be that accused are guilty as

has been held in the case of Pinkibasra Vs. State of Punjab and Others, . The findings of the trial court that the circumstances of the case prove that the accused persons were guilty cannot be upheld and the judgment is liable to be reversed.

8. Accordingly, the appeal is allowed and the judgment as well as order of conviction is set aside. Accused, Daya Lal, Ram Janam, Lurkhur, Phool Chand and Mewa Yadav are acquitted of the charges for which they were tried and convicted. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged. The appellant Kapil Deo having died, the appeal has abated in respect of him.

9. Judgment be certified to the court below for making necessary entry in the relevant Register.