

(2004) 10 AHC CK 0061

In the Allahabad High Court

Case No : Habeas Corpus Petition No. 35964 of 2003

Lakshmi Narain through Dhirendra Kumar Singh (In Jail)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Citation : (2005) 5 AWC 4782

Hon'ble Judges : S.K. Agarwal, J;R.C. Pandey, J

Bench : Division Bench

Advocate : S.C. Kushawaha, for the Appellant; A.G.A., for the Respondent

Judgement

S.K. Agarwal and R.C. Pandey, JJ.—Heard learned counsel for the petitioner and learned A.G.A. and we have gone through the report of the District & Sessions Judge.

2. The report of the learned District & Sessions Judge is based upon the evidence of the son of the petitioner Lakshmi Narain alias Lallu, the convict petitioner, and 4-5 other witnesses belonging to the same village or from nearby villages. One of these witnesses is a Mohamedan. The other witness was a class fellow of the petitioner and his other brother, Lakshmi Kant. The witnesses have categorically stated that his other brother is known as Lakshmi Kant alias Lallan.

3. The petitioner was convicted in this case in the trial of murder of his own sister-in-law along with his father. Both were convicted in 1971. In 1970, according to jail record, the said Lakshmi Narain alias Lallu was lodged in jail during investigation. He was again lodged in jail after his conviction. In the interregnum between conviction and investigation, probably he was on bail. This Court again granted him bail during pendency of the appeal and when this Court confirmed his conviction and sentence in 1976 he was again lodged in jail to serve out the sentence on 29.9.1994. The judgment of appeal shows that there was a direction from this Court for his, apprehension and confinement in jail to serve out his sentence Shitla Prasad, his father, was also convicted along with

him, but he died in the meantime. Therefore, there was no question of his being incarcerated to serve out the sentence. The appellant Lakshmi Narain alias Lallu was thus the person to be sent to jail to serve out his sentence.

4. It appears that no proceeding for his arrest was drawn for a long length of time on the dismissal of his appeal. In 1989 an application came from a villager upon which with great difficulty this man was arrested and remanded to jail, as earlier said, on 29.9.1994. In this backdrop this litigation is nothing but a farce. The petitioner used this petition to obtain a declaration from this Court that he is not Lallu alias Lakshmi Narain who was convicted as aforesaid, but is a different person all together and has wrongly been confined in jail in the present conviction to serve out the sentence (sic). His son had made an application to the District Judge, who was directed to hold an enquiry by this Court earlier. In paragraphs 8 to 10 the averments were that Shitla Prasad had three sons. From the evidence of the witnesses recorded by the Sessions Judge in pursuance to the enquiry directed by this Court this fact was completely negated. Even Lakshmi Narain, who is now in jail, himself, on being summoned, has admitted that he has only one brother, viz. Lakshmi Kant alias Lallan. Same is the statement of his son Dharendra. Thus, the attempt to cause the existence of a third brother by him was a ploy to procure the liberty of this man on this wholesomely false ground. It is an ingenuity of top (sic).

5. The counsel for the petitioner challenged the report of the Sessions Judge on the ground that he had not applied himself properly to the facts of the case collected by him and the record called from the jail.

6. On perusal of this enquiry report we find that the District & Sessions Judge has not only considered the oral evidence received by him but also perused the jail records. The Deputy Jailor, Central Jail, Naini, Allahabad, brought before the Court the attendance and entry register dated 14.8.1970, 9.9.1971 and 29.9.1994. He had filed photocopies of the relevant entries from this register in the enquiry before the learned District & Sessions Judge, Allahabad. Ext. 25-Kha/3 dated 4.8.1970 shows that Lallu Singh son of Shitla Prasad was admitted in jail on the above date. The description of his personality is recorded therein as wheatish colour, longest face, on the cheek bone on right side there was a spot, back of the right hand had a Til, and on the back of the neck also a Til. Another entry Ext. 25-Kha/2 dated 9.9.1971 pertaining to the said person's entry in jail on this date on his conviction by trial court shows that the person lodged in jail was Lallu Singh son of Shitla Prasad Singh. He had longest face, colour wheatish (Sanwla), on the right side cheek a spot of a Phora, on the left forearm another mark of a boil, on the right forearm there was a Til mark also. Ext. 25-Kha/1 entry pertaining to this accused dated 29.9.1994 in jail shows him to be Lallu son of Shitla Prasad Singh, colour wheatish, face longish, right cheek bone had a mark or a spot, front of chest has a Til, on the right colour bone a faint Til. The finding of the learned Sessions Judge is that from all the three entries and the particulars of his identity they appear to have a large resemblance to one

another. All the three entries have hardly any variation on broad features of this person. His final conclusion is that on all the three occasions the same person was confined in jail. Lakshmi Narain claimed that on 29.9.1994 he was for the first time lodged in jail for Lallan, but. according to the learned Sessions Judge his statement to this effect cannot be accepted..

7. In order to test the aforementioned observation of the learned Sessions Judge we have ourselves examined the statement of Lakshmi Narain. In the very first line this witness stated that his real name is Lakshmi Narain son of Shitla Prasad. He is not known as Lallu. He was never called by any villager by this name. He did not bear any name Lallu alias Lakshmi Narain. He further claimed that he does not know any Lallu son of Shitla Prasad. Rest of the evidence is very crucial to establish the falsity writ large in his above statement. "Mere Kewal Ek Bhai Lakshmi Kant Hal Mai Aapne Hosh Se Kewal Aapne Ek Bhai Lakshmi Kant Ko Janta Hun." We have quoted the statement in Devnagri as it is so that there may not occur any mistake in its true import. His denial that he had never been to jail before 1994 in connection with any offence is to be tested in the light of the statement quoted in Devnagari above and his cross-examination. Now, he claims that he did not know whether his father Shitla Prasad was ever convicted in any case or not. He also did not know that his father was convicted for the murder of Smt. Amrawati or not. He is a High School pass. He passed his High School examination in 1966. He claimed that there was another man in the village known as Shitla Prasad, but that man is now dead. He denied that there was only one Shitla Prasad in the village. According to him, his father Shitla Prasad has died nearly 15 years ago. This entire cross-examination reveals that he is deliberately making false statements. Had it been a fact that there was any other Shitla Prasad in the village he could have examined any person from the village or any family member of that Shitla Prasad in his defence, but surprising it is that he did not choose to do so. Let us now examine the statement of his son on whose application this exercise was brought in process. According to his son, Dharendra Kumar, his father Lakshmi Narain is confined in jail. He identified Lakshmi Narain, present in the court of the District & Sessions Judge, as his father. He then claimed that his father is wrongly confined to jail in place of Lallu. Now come the relevant part in his statement. Main Yeh Nahi Junta Hun Ki Lallu Kaun Hai", meaning thereby that he professes total ignorance as to who is Lallu.

8. Still more important part is this that "Main Aapne Pita Ke Kewal Ek Bhai Lakshmi Kant Ko Janta Hun. Mujhe Aapne Pita Ke Kishi Aur Bhai Ke Bare Me Jankari Nahi Main. However, he denied that his father is also known as Lakshmi Narain alias Lallu. He further in cross-examination by the Enquiry Officer claimed that he did not know anything about that murder for which his father is now in jail.

9. When did it occur that also is not known to him. How many persons were convicted was also unknown to this witness. He is aged about 32 years. Who was murderer in the said case was also unknown to him. He admitted that people in

the village called his father as Lakshmi Narain. He further stated that it is not so that his father is being called as Lallu by the people of the village. He further denied the suggestion that in order to obtain release of his father he had taken recourse, on legal advice, to this process and made the impugned application on which the enquiry was proceeding. He denied when it was pertinently put to him showing the accused that he is known as Lakshmi Narain alias Lallu. He denied knowing the name of his grand father. He denied knowing any Lallu son of Shitla Prasad. He denied any person known as Lakshmi Narain alias Lallu son of Shitla Prasad living in his village. He claimed that Ram Sajiwan Patel is Pradhah in his village. When it was put to him that Shanti Devi wife of Ram Sajiwan Patel is Pradhan of his village the witness preferred to keep mum. He denied any enmity with Shanti Devi or her husband. Thus, he seems to have denied every important fact by which the petitioner can be fixed. It is unbelievable that he did not know the name of his grand father. He knowingly denied it. The Sessions Judge also examined Baiju son of Mahesh Kumar, a person aged about 50-60 years, resident of Mohanpura, P.S. Mau Aima, the village where the offence was committed and Shitla Prasad and Lallu permanently reside. This witness stated that Amrawati's murder took place in his village. Lallu was convicted in that case, the second name of Lallu is Lakshmi Narain. His father's name is Shitla Prasad. Lallu alias Lakshmi Narain is a resident of his village. He pointed out to Lakshmi Narain, who was present in court, and stated that he is Lallu alias Lakshmi Narain son of Shitla Prasad. He was convicted for the murder of Amrawati. He further stated that the convicted Lallu alias Lakshmi Narain and Lallan alias Lakshmi Kant are brothers. This convict has only one brother, i.e. Lakshmi Kant alias Lallan, according to him. He further stated that no other brother of this convict is either missing or is dead. He further stated that Lallan alias Lakshmi Kant is living in his village presently. He further claimed that this convicted person present in the court of the Sessions Judge, in the enquiry, has two sons, one is Borewal and the other is Luttan. Pointing to Dharendra Kumar, present in the court in the enquiry, he told the court that this is son of Lallu alias Lakshmi Narain. He is called Luttan also. In cross-examination by Public Prosecutor he claimed that the age gap between Borewal and Luttan is about 6-7 years. Lakshmi Narain present in court is younger to him in age by 4, 6, 10 years, meaning thereby that his estimation of age is poor. Thus, from the statements recorded and discussed in the report by the District Judge hardly any room for any doubt about the correct identity of this person, confined in jail as Lallu, remains.

10. Thus, the averments to the contrary in this petition are total falsehood. No weight can be attached to the allegations made in the petition in this respect. We have discussed the statements ourselves of three witnesses. There are more witnesses. We have perused their statements also. They are Ram Sajiwan, husband of Pradhan Shanti Devi. He lived in the same village where the convict resides. He also identified the accused Lallu present in court as Lakshmi Narain alias Lallu. He gave his correct place of residence us well, Mohanpurwa. He admitted that Lakshmi Narain's brother is Lakshmi Kant and he is known to him

personally. He admitted that Lakshmi Kant is also called as Lallan but about his son and his alias name he claimed that he did not know anything. He further admitted that he had never heard about any third brother of this man. However, he feigned ignorance about the conviction in the murder of Amrawati. He stated that he knew this fact only from the date Lakshmi Narain recently was sent to jail. The crucial fact is that the brother of this convict was his class fellow in primary school. He denied any knowledge that Lakshmi Kant was convicted in any murder case. The most important fact occurs in his statement at the end. 11. is that 4-5 years ago when this Lakshmi Narain was sent to jail no ripple was caused in the village nor any discussion of his being sent to jail wrongly on mistaken identity ever was made in the village by any one. It was never in discussion in the village that a different person, Lakshmi Narain, was sent in place of Lallu.

11. From all these facts occurring in the evidence of the said witnesses we do not entertain any doubt in our mind that there is any dispute of identity of the person who was sent to jail by the police in 1994 after great efforts to serve out the sentence.

12. There is another witness, who had corroborated these facts clearly. He is Shyam Sunder son of Ram Charan. He identified this witness as Lakshmi Narain alias Lallu and named Shitla Prasad as his father. He further admitted that Lakshmi Narain alias Lallu resides in Mauja Bhimpur Mohan Ka Purwa. He further proved that in the year 1970, in village Mohanpurwa, Amrawati was murdered. In that case the person present in court as Lakshmi Narain alias Lallu and his father Shitla Prasad were accused. He further stated that said murder trial was prosecuted against the accused present in court and identified by him earlier and his father Shitla Prasad. They were convicted by the trial court. He further stated that this accused has another brother known as Lakshmi Kant alias Lallan. No other brother he has. He denied that in the murder trial of Amrawati, Lakshmi Kant alias Lallan was prosecuted. He completely denied existence of a third brother of this Lakshmi Narain. To a question put to the witness by the counsel of accused Lakshmi Narain that how he learnt that Lakshmi Narain, present in court, was an accused in the murder of Amrawati. The response was that he knew it since long. He further said Lallu is alias name of Lakshmi Narain. He was further suggested that he is deposing against the accused in the enquiry on account of enmity. That was denied by him. No documentary evidence was brought on record from the side of this petitioner to prove any enmity with him. He stated that the judgment by the court was delivered in the murder of Amrawati in 1976. He was asked why he had complained in the year 1994. The correct fact is that the complaint was made in the year 1989 and the arrest of this accused was made on 29.9.1994. When he was questioned why complaint was made so belatedly, the response was that the file was suppressed in the office of the court below. People (sic) this state know and believe that appeals in this Court take for the last several years twenty or more years.

13. No cross-examination from the Deputy Jailor, N.K. Singh, was made on behalf of this accused-petitioner. Thus, the records brought by him and the photo-copies filed in court as Exts. 25-Kha/1, 2 and 3, which were earlier discussed by us, have not at all been challenged in the enquiry by the petitioner. The net result is that we are of firm opinion that this entire proceeding is nothing but a farce. A vain attempt is being made by the petitioner through his son Dhirendra Kumar Singh, who is a fully matured person in the age group of 32 years. A false case has been set up before us. Lot of clamour has been made by learned counsel for the petitioner before us that serious injustice it is that an innocent person has been confined in jail to serve out the sentence of wholly an unknown person. As earlier stated, we do not entertain any doubt whatsoever in his identity and correctness (sic). A proper person who was convicted for the murder of his own sister-in-law along with his father is now confined in jail after a long lapse of time in which he has somehow or the other managed consignment of the record in the lower court and enjoyed the freedom, despite his conviction being confirmed by this Court without serving his sentence.

14. We could have easily issued notice to prosecute his son Dhirendra but taking a compassionate look into the entire facts and circumstances of the case in its totality we refrain ourselves from entering into this exercise. A harassed son as he apparently seems to be at the hands of his father who does not want to serve out the sentence for his sin, i.e. murder of his own sister-in-law, Amrawati, he filed this petition. Probably he is the only bread earner in his family. If a prosecution is directed against him that would cause serious hardship to the remainder of the family,

15. In view of these, we do not make any such direction. However, for prosecuting a false case in this Court and misleading and misguiding the Court and wasting its precious time on various dates, we impose a cost of Rs. 20,000/- upon the petitioner. His son Dhirendra shall be liable to deposit this amount within six months from now. In case of any failure to deposit this cost it shall be recovered as land revenue from his property.

16. In view of above the petition is dismissed.

Sd. S.K. Agarwal Sd. R.C. Pandey Dated : October 1, 2004 PG.

S.K. Agarwal, J.

R.C. Pandey, J.

17. We have decided today Civil Misc. H.C. Petition No. 35964 of 2003 by which false claim was made by the convict who was convicted and sentenced by the trial court in 1971 in Sessions Trial No. 341 of 1970 for murdering Smt. Amrawati. His appeal by this Court was dismissed in the year 1976. From 1976 till 1994 despite a direction from this Court for his arrest to serve out the sentence. This accused continued to enjoy the liberty as if he was never convicted. It cannot be said that the office of the lower court was not in collusion

as without their collusion this accused, who was arrested in 1994 Lakshmi Narain alias Lallu resident of Naini, Allahabad, would not have remained out of jail after dismissal of his appeal from this Court for such a long length of time. He remained out of jail for 18 years. One villager Ram Swat made a complaint in 1989. On that complaint, though it was directed to hold an enquiry, nothing happened till a petition was preferred in this Court by the son of the accused. This Court directed an enquiry to be held by the District and Sessions Judge. Evidence of several witnesses was recorded in that enquiry. The jail records were perused and after that the court of District and Sessions Judge ultimately concluded that the person sent to jail for the conviction to serve out his sentence is the proper person and the application was made on wholly false grounds by his son. This has aroused this Court seriously. Court is of the opinion that there may be many more persons in this State who must be enjoying freedom like this accused Lakshmi Narain alias Lallu, even after their conviction without being lodged in jail due to connivance of the staff of the District Judgeships concerned and the local police. In a situation like this, we intend to direct the D.G.P. of the State to provide to this Court a district-wise record of conviction recorded in the last 25 years and also results of the appeal preferred in this Court by such convicts. How many such accused, whose appeals have been dismissed and sentence was confirmed, are lodged in jail to serve out their sentences. These facts are to be collected from every district by the D.G.P. within two months and the report be submitted to this Court in Civil Misc. H.C. Petition No. 35964 of 2003. The office is directed to register it as a Misc. Case and it shall remain(sic) tied up with this Bench. copy of this judgment be also kept in the file of this Misc. Case. It is to be listed in the second week of January, 2005 on receiving the report from D.G.P.

18. The Registrar General is also directed to circulate an order to the effect that every Chief Judicial Magistrate is required to submit a compliance report as soon as he receives either a copy of the judgment of conviction from this Court or a copy of the order-sheet of this Court whether the accused has been arrested and remanded to jail or not in pursuance thereto. Presently no such communications are received from them for quite sometime.