

(2015) 09 AHC CK 0211

In the Allahabad High Court

Case No : Criminal Appeal Nos. 290, 72, 55, 60, 69, 46, 73, 71, 90, 74, 70, 20, 53, 52, 19, 31 and 45 of 2012

Laxmi Prasad and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 437-A
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 9 ADJ 325 : (2015) 91 ALLCC 511

Hon'ble Judges : Arvind Kumar Tripathi and Ranjana Pandya, JJ.

Bench : Division Bench

Advocate : R.S. Pandey, Madan Mohan, Rakesh Tripathi, Rishad Murtaza, Alok Singh, Om Prakash Srivastava, M.P. Yadav, Brijesh Yadav "Vijay", Sikandar Z. Khan, Mahendra Singh Rathore, Onkar Singh, Nagendra Mohan, Salil Mohan, Rajesh Kumar, B.P. Singh, Udai Pratap Singh and Rahul Srivastava, for the Appellant

Final Decision : Allowed

Judgement

Arvind Kumar Tripathi, J.—All the above-noted 17 criminal appeals have been preferred against the judgment and order of conviction and sentence dated 20.12.2011 passed by Additional District & Sessions Judge, Court No. 5, Sultanpur, in S.T. No. 29/1997, State v. Hari Bahadur Singh and 23 others, arising out of case crime No. 342 of 1996, under Section 147 , 148 , 149 , 307 , 302 , 436 , 437 , 506 IPC and Section 7 CrI. Law Amendment Act, P.S. Lambhua, District Sultanpur. Accused Ram Nihore, Mitthu Lal, Ram Prasad died during trial hence trial against them stands abated.

2. One accused Dinesh Kumar was declared juvenile vide order dated 11.11.2010 hence his trial was separated.

3. Now the above connected appeals have been preferred on behalf of 20 accused appellants. Since all the above noted 17 criminal appeals have been

preferred against same judgment and order of conviction in the same trial, hence same are being considered and decided jointly, by a common judgment.

4. Mr. Om Prakash Srivastava, Advocate, appeared on behalf of all the appellants except, appellant Om Prakash @ Kariya and another, in Crl. Appeal No. 20/12.

5. Mr. Rajesh Kumar, Advocate, appeared on behalf of Om Prakash and another in Crl. Appeal No. 20 of 2012. Mr. Sarad Dixit, learned AGA, appeared on behalf of State.

6. We heard the arguments of learned counsel for the parties and judgment was reserved on 5.8.2015.

7. The brief facts of the prosecution case is that First Information Report was lodged at police station Lambhua, Sultanpur, by Om Prakash Tiwari (P.W. 1), son of Prem Sagar Tiwari, resident of Chandipur, P.S. Kurebhar, District Sultanpur on 17.7.1996. According to F.I.R. version complainant was Manager of Contractor of countrymade liquor. He along-with his associates Rakesh Singh son of Jhuri Singh, Devendra Singh @ David Singh son of Arendra Singh, Bhuneshwar Singh son of Bhageshwar Singh and driver Rajendra resident of Muthiganj, Allahabad, went by Commander Jeep No. U.P. 42-B 0452 and in another Commandar Jeep No. U.P.51A-6814. Vinod Tripathi, Nand Lal, Sarvendra Kumar Singh, Chandra Bhan Singh came for checking sale of liquor on 17.7.1996 in the area as he get information that at Arjunpur one Raj Bahadur Singh resident of Arjunpur, P.S. Lambhua, District Sultanpur, was selling illicit liquor. When he reached along-with his companion at Arjunpur market at about 17.45 (5.45 P.M.) he found Raj Bahadur Singh was selling illicit liquor. He objected on which Raj Bahadur Singh started abusing and said how complainant and his associates dared to reach there. Nobody dared to reach there and to raise objection. He threatened the deceased and started shouting that complainants and their companions were "Manav Tenduwa" those used to lift the children, though he was aware that they were employees of the contractor of excise contract. Thereafter, (1) Raj Bahadur Singh son of Banke Singh (2) Sher Bahadur Singh son of Banke Singh (3) Sharda Prasad Singh son of Janardan Singh (4) Rakesh Kumar son of Ram Achal (5) Ramesh Pasi son of Raghubar (6) Laxmi Prasad son of Sheetala Prasad (7) Abhayraj Loriai son of Shivnandan (8) Ambika son of Ratipal Lonia (9) Om Prakash @ Kariya Pasi son of Ram Pher (10) Rajjupal Singh son of Kashipal Singh resident of Arjunpur, P.S. Lambhua jointly started beating him though they disclosed their identity and accused appellants stopped the commander jeep No. U.P. 42 B 0452. Ramsher @ Sherai son of Khunkhun, Guddu Pasi son of Rajaram, Ram Nihore son of Beepat, Vedhraj son of Juttu Lonia, Lalta son of Bhawani, Baboo son of Jagannath, Udairaj son of Kushun Lonia, Jamuna Lonia son of Abhayraj, Mittu Lal Chauhan son of Ram Kuber, Dinesh Pratap Singh son of Baijnath, Ram Prasad son of Mahabeer Chauhan, Dinesh Kumar son of Lalta Prasad, Vijay Pal Singh son of Matabadal Singh, Paljhu Pal son of Ram Laut and 4-5 others, who were having lathi, danda, Kulhari, Farsa assaulted and killed Bhuneshwar, Rakesh Singh, Devendra Singh @ David, damaged the jeep and put

the jeep on fire. They also assaulted complainant and driver of the jeep, who received injuries. The driver of the second jeep in which other persons were sitting, turned the jeep back and escaped. They were chased by Ramesh Bahadur @ Sheraee and others by jeep and motorcycle. The gate of railway crossing of Lambhua was closed hence they left the jeep and to save their lives they ran away and that jeep was also damaged and put on fire. The complainants and other persons any how succeeded to run away from the spot and saved their lives. The First Information Report was lodged and registered at case crime No. 342 of 1996, under Section 147 , 148 , 149 , 307 , 302 , 436 , 427 , 506 IPC and 7 CrL. Law Amendment Act at P.S. Lambhua, District Sultanpur on the same day i.e. 17.7.1996 at 19.00 Hr. (7.00 P.M.). The distance of police station from the place of incident was about 6 and half km. towards south. The chick report was exhibited as Exhibit Ka-27 (written report was lodged as Exhibit Ka-1). After First Information Report was registered against all the 24 named and 4-5 unknown persons, the same was mentioned in the G.D. on that date. Thereafter, injured Rajendra Kumar was sent with "Chitthi Majroobi" for medical examination at district hospital, Sultanpur. The complainant was examined in the C.H.C., Lambhua. Thereafter, Investigation was handed over to Investigating Officer, Abhay Pratap Singh, P.W. 6, who went along-with complainant for spot inspection and to prepare "site plan" and on pointing out of complainant he also prepared recovery memo regarding burnt Jeep No. U.P. 42, B-0452, and Jeep No. U.P. 51A, 6814, the recovery memo of Rajdoot motorcycle of the accused and recovery memo of Jeep U.R.E. 2555 belonging to accused Sher Bahadur. The I.O. has also collected blood stained and plain soil. The panchayatnama of deceased Devendra Singh @ David Singh, Bhuneshwar Singh and Rakesh Singh were prepared after appointing punch (witnesses). The other papers were prepared to sent the dead body for post-mortem to district Hospital, Sultanpur. The postmortem was conducted by Dr. V.K. Shukla on 18.7.1996, who was posted at that time in District Women Hospital, Sultanpur, as District Medical Officer. After completing the investigation the charge-sheet was submitted against 24 persons including the appellants under Section 147 , 148 , 149 , 307 , 302 , 436 , 427 , 506 IPC and 7 CrL. Law Amendment Act. The case was committed by the C.J.M., Sultanpur, to the Court of sessions. The charges were framed on 11.12.2001. Thereafter, same were modified on 29.7.2005. The prosecution to prove its case examined 7 witnesses, Om Prakash, complainant, was examined as P.W. 1 who lodged the First Information Report, Sarvendra Kumar Singh as P.W. 2, Chandra Bhan Singh as P.W. 3, Dr. A.P. Mishra as P.W. 4, who examined injured Rajendra Kumar at 1 O'clock in the night, Dr. B.K. Shukla as P.W. 5, who conducted post-mortem, Inspector Abhay Pratap Singh as P.W. 6, Dr. Manoj Khatri as P.W. 7, who examined complainant on 17.7.1996 at about 11.05 P.M. at C.H.C. Lamhua, where he was posted as medical officer as physician.

8. After the evidence was closed by the prosecution the accused appellants were examined under Section 313 Cr.P.C. They denied the incident and commission of offence and said that report was lodged after consultation with the police. At that

time there was terror of "Manav Tenduva" and if any unknown person reached in the area of Chanda of district Sultanpur and Pratapgarh they were chased and assaulted because as per complaint those unknown persons used to take out the vital internal organ of human beings. The police party on the basis of suspicion apprehended 50-60 persons of the resident of village, out of whom those who could not settle the matter with the police, they were challaned, though they were not involved in the incident and they were not known to the witnesses. Those who settled the matter with the police they were released.

9. Learned counsel for the appellants Mr. Om Prakash Srivastava, submitted that prosecution story is doubtful. The complainant was not resident of that area rather he was outsider as he was appointed as Manager by the Contractor of the countrymade liquor, just few months back and he was not in public contact, so he was not aware regarding the names and parentage of the accused appellants, but after consultation with the police, name and parentage were mentioned in the First Information Report. After direction of the High Court the identification parade took place, however, he could not identify any of the accused appellants. According to his own statement while giving reply during cross-examination, he stated that he did not know names of father or uncle of any of the accused appellants. Even he was not aware regarding the name of father of his companion Rajendra, who also received injuries in the same incident. Mr. Rajendra Kumar @ Raju was examined at Sultanpur on the next date i.e. 18.7.1996. In the First Information Report all the accused appellants were named with their fathers name, which clearly shows that with consultation of the police First Information Report was lodged. Even there is no entry in the G.D. regarding the steps taken by the I.O. during investigation. The complainant was examined at C.H.C., Lambhua, however, Rajendra Kumar also went along-with him at Lambhua but he was not examined there, rather he was medically examined next day at Sultanpur. He further contended that out of three prosecution witnesses of fact P.W. 2, Sarvendra Kumar Singh and P.W. 3 Chandra Bhan Singh were declared hostile, who did not support the prosecution story regarding involvement of the appellants. Hence it is clear that though the incident took place in which three persons were beaten to death, who were unknown in that area and two persons received injuries but appellants were not involved in the said incident. The prosecution failed to prove that the appellants were involved in the incident. The injured witness, who was one of the important witness and the Magistrate, who conducted identification parade were not examined from the side of the prosecution. Hence since prosecution failed to prove its case beyond reasonable doubt and as such judgment of conviction and sentence awarded merely on the basis of conjectures and surmises, in which accused appellants were named in the F.I.R. is illegal, against the evidence on record and is liable to be set aside.

10. Mr. Rajesh Kumar, learned Advocate, appeared on behalf of appellants Om Prakash @ Kariya and Shamsheer @ Sherayee. He adopted the argument of Mr. Om Prakash Srivastava, Advocate. He further submitted that since accused

appellants were not known to the complainant hence it is clear that after consultation with the police and on direction of the police they were named in the First Information Report. Since the prosecution failed to prove the case beyond reasonable doubt, as such appellants are liable to be acquitted.

11. Learned AGA vehemently opposed aforesaid prayer and submitted that complainant was examined at C.H.C. Lamhua on 17.7.1996 and Rajendra Kumar was referred to District Hospital, Sultanpur. Admittedly he was examined. The damaged jeep was recovered from the spot belonging to the accused appellants and the ownership of the jeep was not denied by Sher Bahadur Singh. The blood stained lathi was also recovered. In spite of best efforts by the prosecution Rajendra kumar could not be examined because he was not available at his residence. Since accused appellants were named in the First Information Report hence identification was not required and one injured witness, who is complainant in the present case has supported the prosecution case and there was no reason of false implication. Since the prosecution has proved the case beyond reasonable doubt and as such appeal is liable to be dismissed.

12. Considered the submissions of learned counsel for the parties. In criminal appeal the appellate Court is required to consider the evidence independently without going through the judgment of the trial Court and evidence be verified independently for independent opinion to arrive at any conclusion. The appellate Court has to reappraise the evidence itself, as held by the Hon'ble Supreme Court in the cases in Padam Singh Vs. State of U.P., ; Majjal Vs. State of Haryana, and Kamlesh Prabhudas Tanna and Another Vs. State of Gujarat, .

13. It is well-settled that the prosecution is required to prove the case beyond reasonable doubt. The First information report is also vital and important piece of evidence for corroborating oral evidence adduced before the trial Court.

14. In the present case First Information Report was lodged by complainant Om Prakash Tiwari, who is admittedly not resident of that area, where incident took place rather he is resident of Chandipur, P.S. Kudhebbhar, District Sultanpur and the incident took place at village Arjunpur, P.S. Lamhua. He did not know name of father of his companion Rajendra Kumar, who was also assaulted. According to his own statement, who was examined as P.W. 1, he has signed on the identification parade before the Magistrate. In view of the statement it is clear that he was not familiar with residents, of that area and the appellants were known to him but in the First Information Report all the 24 alleged accused including the appellants were not only named but their father's names were also mentioned, which is unnatural that he was conversant with the name of all the accused with their paternity.

15. P.W. 1, Om Prakash has also admitted that he did not witness the occurrence in respect of the second jeep. He has also stated that his jeep was damaged by the villagers.

16. When written statement under Section 313 Cr.P.C. was filed on behalf of

accused, it was clearly stated by them that at that time there was terror in that area of "Manavtendva" and if any unknown person entered into that area the resident of that area used to chase and assault them as there was a rumor and suspicion that those "Manav Tenduva" used to take vital internal organs of the persons, specially of children. Only three witnesses of fact were examined out of which two witnesses namely P.W. 2 Sarvendra Kumar Singh and P.W. 3 Chandra Bhan Singh did not support the prosecution version regarding involvement of the appellants and others, who were named, hence they were declared hostile. Only P.W. 1, Om Prakash Tiwari, supported the prosecution version regarding involvement of the appellants. However, in his statement he informed that he did not know names of fathers and uncle of accused appellants but in the First Information Report all the 24 accused were named with their parentage. This was the specific case of the defence in their written statement under Section 313 Cr.P.C. that on the basis of suspicion 50-60 villagers were apprehended by the police and they were taken at police station, however, those who could settle the matter with the police were released and 24 persons including the appellants were falsely implicated in the present case. The statement of P.W. 1 as well as circumstances clearly shows that naming of all the accused is doubtful and this possibility cannot be ruled out that complainant, after consultation and information regarding the name and parentage, the appellants were named in the First Information Report. Apart from that not only, during identification parade the informant could not identify the accused appellants but even before the Court, they were not identified though the appellants were present.

17. Although the star witness of the prosecution P.W. 1, informant, Om Prakash has unsuccessfully turned to home the accused persons but he himself could not categorically name and identify all the accused persons thereby demolishing the entire prosecution case. Although it is well-settled that sole testimony is sufficient to prove the prosecution case but in the case in hand it is a case practically of no evidence and no corroboration whereas in such cases the Courts try to find the corroborative evidence too. In *Inder Singh and 2 others v. State of Rajasthan*, 2015 (1) SCC 369, it has been held that if the accused daringly murdered four persons in day light in presence of large number of people and six eye-witnesses supported the prosecution case corroborated by medical evidence then conviction would be proper.

18. In the instant case, even the injured eye-witnesses could not name all the accused, and any other eye-witness could not name all the accused thus the prosecution case stands shattered.

19. Injured Rajendra Kumar was one of the important witness but prosecution did not examine him and other two witnesses P.W. 2, Sarvendra Kumar Singh and P.W. 3 Chandra Bhan Singh became hostile. There is no clear and cogent evidence against the accused appellants though prosecution was required to prove the case beyond reasonable doubt.

20. As far as medical examination of injured Rajendra Kumar is concerned,

though he went along-with complainant but he was referred to district hospital, Sultanpur and he was not examined on the next date rather he was examined in the same night of 17/18.7.1996 itself at 1.00 A.M. in the night. Since date was changed after 12 midnight and as such the date, in place of 17.7.1996, was shown 18.7.1996. Hence this contention of the learned counsel for the appellants that Rajendra was examined on the next day is baseless.

21. As far as recovery of jeep or blood stained lathi is concerned, there is no effectual expert report regarding the alleged blood on lathi. Regarding ownership of the recovered jeep no evidence was adduced by the prosecution and even no question was put either to accused Sher Bahadur Singh in his statement under Section 313 Cr.P.C. or Investigating Officer. Hence if the question was not put to the accused appellants that piece of evidence regarding recovery cannot be read in favour of the prosecution and against the accused appellants in view of the judgment of the Hon''ble Apex Court in case of Paramjeet Singh @ Pamma Vs. State of Uttarakhand, and Sujit Biswas Vs. State of Assam, .

22. In view of the facts and circumstances, and evidence adduced by the prosecution and from perusal of the evidence of P.W. 1, 2 and 3 only this much can be said that they have proved the incident, which took place on 17.7.1996 in which three persons were beaten to death and two persons received injuries. However, the prosecution failed to prove the case against appellants beyond reasonable doubt to prove the guilt of the appellants. Hence appellants are entitled for benefit of doubt.

23. In view of the facts and circumstances and abovenoted discussion, judgment and order of conviction and sentence dated 20.12.2011 passed by Additional District & Sessions Judge, Court No. 5, Sultanpur, in S.T. No. 29/1997, State v. Hari Bahadur Singh and 23 others, arising out of case crime No. 342 of 1996, under Section 147 , 148 , 149 , 307 , 302 , 436 , 437 , 506 IPC and Section 7 CrI. Law Amendment Act, P.S. Lambhua, District Sultanpur, is hereby set aside. All the appellants shall be released forthwith in the present case provided all the appellants furnish two sureties and a personal bond of the amount fixed by C.J.M., Sultanpur to the satisfaction of C.J.M. as per the provisions of Section 437-A Cr.P.C. Accordingly, all the above noted seventeen appeals are hereby allowed.