
(1999) 12 AHC CK 0126
In the Allahabad High Court
Case No : Criminal Appeal No. 737 of 1994

Mahendra Yadav	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2000) 1 ACR 139

Hon'ble Judges : R.R.K. Trivedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : Haider Zaidi, Rajesh Kumar Yadav, Amar Nath Mishra, S.P. Srivastava, R.J. Singh and S.P. Tiwari, for the Appellant; N.D. Shukla and A.G.A., for the Respondent

Judgement

M.C. Jain, J.—The Appellant Mahendra Yadav has preferred this appeal against the judgment and order dated 22.4.1994 passed by Sri R. P. Shukla, Additional Sessions Judge, Gyanpur-Varanasi in Sessions Trial No. 63 of 1991. He has been convicted u/s 302, I.P.C. and sentenced to life imprisonment and to pay a fine of Rs. 5,000. In default of payment of fine he has been sentenced to undergo further simple imprisonment for two months.

2. The prosecution case, as per the First Information Report and the evidence adduced in the Court, may be stated in its broad essentials. The deceased was one Awadhesh engaged in preparing earthen pots. The incident took place on 21.6.1991 at about 6 a.m. near railway line in village Kanghia, Police Station Chauri, district Varanasi. The informant was Hansraj P.W. 2 brother of the deceased who lodged the report of the incident at 7.30 a.m. that day. The distance of the Police Station from the place of occurrence was five kilometres. The marriage of Bhola Nath younger brother of the accused-Appellant was to be performed on 17.6.1991. Two-three days before that, he approached the deceased at his house and asked him to supply earthen pots needed in the marriage of his brother on credit. The deceased declined to supply the earthen

pots to him on credit. The accused-Appellant got annoyed thereby and went away after offering threats to him that he would be taught a lesson after the marriage of his brother was over. On the fateful day and time, the deceased went to ease himself in the southern side of the village near the railway line and he was easing himself when the accused-Appellant committed his murder after coming out from the foliage of Babool trees and striking phwara blows on him. The cries of the victim attracted the informant Hansraj P.W. 2, Somaru, Kailash, Molai P.W. 1, Bauram and Mangaru who came running and challenging the accused-Appellant. After striking repeated phwara blows on the victim, the accused-Appellant tried to run away with the weapon of offence. The complainant and the other witnesses chased him and apprehended along with blood stained phwara wherewith he had struck blows to the victim. The victim-Awadhesh died then and there. The accused-Appellant was left in the custody of Somaru, Molai P.W. 1, Bauram and Mangaru and the informant Hansraj P.W. 2 went to lodge the First Information Report which was lodged the same day at the Police Station at about 7.30 a.m. A case was registered. The investigation followed as usual which was conducted by S. I. Dwarka Prasad Mishra, P.W. 6. He reached the spot, inspected it, recorded statements of the witnesses, took in possession the phwara and took in his custody the accused-Appellant Mahendra Yadav. After necessary formalities, the dead body was sent for post-mortem which was conducted by Dr. Ravi Dutt Dwivedi P.W. 4 on 21.6.1991 at 5 p.m. The deceased was aged about 30 years. The following ante-mortem injuries were found on his person:

1. Incised wound 6 cm. ? 1.5 cm. ? bone deep in size on the dorsal surface of the scalp on the right side 3 cm. postero-superior to the right mortoid bone.
2. Incised wound 7 cm. ? 1 cm. ? bone deep in size on the right side of the face just below the lobule of the right ear pinna, extending antero-posteriorly.
3. Incised wound 7 cm. 1.5 cm. ? bone deep in size on the right and dorsal surface of the neck 2 cm. postero interior to injury No. (2).
4. Incised wound 15 cm. ? 5 cm. ? 8 cm. deep in size on the right side of the neck and face. Blood vessels, nerve, muscles and bones are cut across in the wound.
5. Incised wound 3 cm. ? 0.5 cm, bone deep in size on the right side of the buttock 7 cm. left to the midline at the level of the 5th lumber spine.
6. Incised wound 7 cm. ? 1.5 cm. ? bone deep in size on the left side of the back at left to the midline at the level of the 3rd throacic spine.

On internal examination, skull bone was found fractured on right side and posterior part. Base was also fractured. The death had occurred due to shock and haemorrhage on account of ante-mortem injuries and about half day had passed since he died.

3. The accused-Appellant pleaded false implication due to enmity and contended

that he had been apprehended by the police from his house.

4. The prosecution examined six witnesses in support of its case besides relying on documentary evidence. Out of them, Molai P.W. 1 and Hansraj P.W. 2 were the eye-witnesses. The trial Judge believed the prosecution case and evidence and convicted and sentenced the accused-Appellant as stated in the opening paragraph of the judgment. The matter is now in appeal before this Court.

5. We have heard learned Counsel for the Appellant in support of the appeal and the learned A. G. A. in opposition thereof. We have also carefully gone through the record of the case. The learned Counsel has argued for the accused-Appellant that there was no motive on the part of the accused-Appellant to commit this murder ; that the witnesses produced by the prosecution were interested and chance witnesses; that no independent witness had been examined ; that the alleged manner of arrest of the accused-Appellant was unnatural and doubtful; that there was conflict between the ocular and medical evidence. We propose to deal with these aspects of the matter one by one in the succeeding discussion.

6. So far as the aspect of the motive is concerned, it is well accepted principle of criminal law that motive takes a back seat in a case of direct evidence regarding the commission of a crime by a particular accused, as is the situation here. That apart, the prosecution has placed on record in truthful and unalloyed terms as to the previous background of the incident that the marriage of the brother of the accused-Appellant was to be performed on 19.6.1991 and 2-3 days before that he had come to the deceased asking him to supply earthen pots needed in marriage on credit for which he (deceased) had not agreed and at that time the accused-Appellant had offered threats to him that he would be taught a lesson after the marriage of his brother was performed. It was so stated in the First Information Report lodged by Hansraj P.W. 2 which was the earliest version of the prosecution. Both the eye-witnesses, namely, Molai P.W. 1 and Hansraj P.W. 2 deposed in their testimony regarding this factum. Both of them were present at that time. The learned Counsel for the Appellant has reasoned that the alleged motive was too weak to have actuated the accused-Appellant to commit the murder of the victim. It should be pointed out in this regard that different persons react differently in a given situation. Some are so hot headed by innate temperament that they react sharply and in extreme manner on a minor issue while others maintain their calm and composure even in a grave or highly provocative situation. The prosecution could not be expected to do better than bringing on record the previous background as it was. Nor could it be expected to concoct some other false motive on the part of the accused-Appellant for the commission of this crime. It was not for the prosecution to explain as to why did the accused -Appellant act in such a violent manner by committing the murder of the deceased over the previous background that the deceased had declined to supply to him earthen pots on credit for the marriage of his brother.

7. Learned Counsel for the accused-Appellant urged that in first information report Hansraj P.W. 2 stated that it was the marriage of Bhola Nath-younger

brother of the accused-Appellant which was to be performed. However, there is a contradiction emerging from his testimony before the Court as P.W. 2 that it was the marriage of the accused-Appellant's brother Chhotelal which was to be performed. It has been submitted that the prosecution is not consistent and firm as to whose marriage was to be performed in the family of the accused for which he had allegedly asked the deceased to supply earthen pots on credit. We are not prepared to attach any importance to this argument and are inclined to reject it. It could be so that the younger brother of the accused-Appellant whose marriage was to be performed had an alias name as Chhote Lal. This view gets strengthened in the light of this fact that Hansraj P.W. 2 was not at all cross-examined in respect of the alleged contradiction regarding the name of the younger brother of the accused whose marriage was to be performed. Thus, no opportunity was afforded to him in this behalf. Nor was it suggested to him that the accused did not have any brother either of the name of Bhola Nath or Chhote Lal. Therefore, on considering the question of motive from different angles, our view is that the accused-Appellant can neither complain of absence of motive nor can gain any point by harping on alleged insufficiency of motive for the commission of this crime.

8. Secondly, true it is that Molai P.W. 1 and Hansraj P.W. 2 are interested witnesses being the uncle and brother respectively of the deceased but none of them can be dubbed as a chance witness. A chance witness is one whose presence at the time of occurrence is adventitious or fortuitous and who could not normally be expected at the scene of occurrence. This is not so in the case of Molai P.W. 1 and Hansraj P.W. 2. The incident took place in the morning time at about 6 a.m. when the deceased had gone to ease himself. Obviously, it was the time to answer the call of nature and there is nothing unusual that Molai P.W. 1 and Hansraj P.W. 2 were also going to answer the call of nature. It is common practice that villagers go to the outskirts of the village in the morning time to ease themselves. The argument, therefore, cannot be accepted that any of these witnesses was a chance witness. Of course, they are interested witnesses being close relatives of the deceased and so the only requirement is of scrutinizing their testimony with caution. On testing their testimonial assertions on strict judicial scrutiny, we find them to be perfectly believable. Both of them were subjected to searching cross-examination, but nothing could be elicited to create a dent in their evidence. The name of Molai P.W. 1 finds place in the promptly lodged first information report also. The learned Counsel for the accused-Appellant has argued that as per the site plan prepared by the Investigating Officer, the distance between the place of the murder of the deceased from the place where these two witnesses heard his shouts was about 140 paces. Molai P.W. 1 also so stated in his cross-examination. It has been submitted that they could not hear the shouts of the victim from such a distance and could not reach the spot to witness the incident. We do not locate any merit in this argument. In almost open area at the outskirts of the village, the shouts of the victim could be heard by these two witnesses from such distance in early hours of the day and

they could also rush up to the scene of occurrence to witness the striking of some of the blows by the accused on the victim by phwara. It may be recalled that the deceased had received as many as six incised wounds on his body at the time he was easing himself. Actually, he was taken unawares by the accused-Appellant who had come out of the foliage of Babool trees and had started striking phwara blows on him. Indeed, the victim could raise shouts on receiving the first blow. On being attracted by his shouts, the two witnesses named above could reach the scene and witness the striking of some blows of phwara by the accused on the victim. It is further to be kept in mind that it is a case of spot arrest of the accused-Appellant along with weapon of the offence by these witnesses and others and it supplies intrinsic evidence that he was the actual culprit. The criticism levelled by the learned Counsel for the Appellant against the testimony of the two eye-witnesses is wholly imaginary and unfounded.

9. Thirdly, the absence of other independent witnesses would not adversely affect the prosecution case. It is well known that it is the quality of the evidence, and not the quantity that matters. A particular case is required to be decided on the strength of the evidence adduced before the Court and no negative inference can be drawn on the basis of non-production of other witnesses who could have been produced. We accordingly reject this argument too that no other independent witness has been examined by the prosecution.

10. Fourthly, we do not see any doubt or unnaturalness in the manner of arrest of the accused-Appellant. The learned Counsel for the accused-Appellant has argued that if he had been apprehended at the spot, he must have received a number of injuries at the hands of his captors. We do not see any merit in this argument. The offence had already been committed by the accused-Appellant before he was apprehended and the same could not be undone by assaulting him or giving him a severe beating. The witnesses cannot be blamed if they did not take the law in their own hands and only confined themselves to apprehending the accused-Appellant for being handed over to law. Molai P.W. 1 and Hansraj P.W. 2 did state that at the time of apprehending, the accused-Appellant had sustained some injuries by throwing of clods or ballasts by his chasers but his injuries were not serious. He having been apprehended with the weapon of offence after brief chase, the object had been achieved and the witnesses could not be expected to cause serious injuries to him.

11. Learned Counsel for the accused-Appellant urged that the two eye-witnesses were not uniform as to how the accused-Appellant had been tied, Molai P.W. 1 stated that his hands had been tied with an angochha (a light towel), whereas Hansraj P.W. 2 stated that his feet had also been tied. The statement of S. I. Dwarka Prasad P.W. 6 is that when he had reached the spot, he had found the accused-Appellant to have been tied by his waist. We do not think that the accused-Appellant gains any point by referring to such insignificant contradiction as to how the accused-Appellant had been tied. What is material is that he had been apprehended at the spot and had been rendered immobile. It does not

matter at all as to whether his hands had been tied or his feet had also been tied or he was tied by his waist.

12. Another argument of the learned Counsel for the Appellant in the context of arrest of the accused-Appellant is that if he had been apprehended at the spot, ordinarily, he would have been taken to the Police Station when the report was lodged. We do not think that it was at all necessary. He had been disarmed at the spot itself and was handed over to the Investigating Officer when he arrived. Rather it was more appropriate that he was detained at the place of occurrence itself in the supervision of certain persons instead of being taken to the Police Station covering a distance of five kilometres. To terminate the point under discussion, we reject the argument that the manner of arrest of the accused-Appellant was unnatural or doubtful.

13. The last argument of the learned Counsel accused-Appellant is that the ante-mortem injury No. 4 of the deceased Awadhesh could not have been caused by phwara. He urged that its dimensions were quite different from those of other incised wounds found on the person of the deceased. To our mind, this argument is not at all acceptable. Dr. Ravi Dutt Dwivedi P.W. 4 clearly testified before the Court that all the incised wounds sustained by the deceased could have been caused by a phwara. It has to be kept in mind that this injury had been inflicted on a bony part and was 8 cm. deep. It is further to be pointed out that the weapon of offence (phwara) had been recovered and was subjected to scientific examination. As per the report of the serologist, it contained blood-stains, though disintegrated. If the defence was serious in challenging that ante-mortem injury No. 4 of the deceased could not have been caused by the said phwara, Dr. Ravi Dutt P.W. 4 should have been interrogated on this aspect of the matter and confronted with the phwara. This was not done. At the appellate stage, an imaginary argument is being put forth to induce force in this lifeless appeal.

14. While concluding, it may also be stated that it is a case of single accused and single deceased. The prosecution did not have reason to falsely implicate the accused-Appellant. It is also a case of spot arrest. It does not stand to reason at all that the prosecution would spare the real culprit and would substitute the accused-Appellant for him without any reason whatsoever.

15. We are of the firm opinion that the case of the prosecution was proved against the accused-Appellant by clinching and trustworthy evidence that he intentionally caused the death of the deceased. He has rightly been convicted and sentenced u/s 302, I.P.C. No. interference is called for by this Court of appeal.

16. For the reasons contained in the foregoing paragraphs, we dismiss this appeal and affirm the conviction and sentence of the accused-Appellant Mahendra Yadav passed in Sessions Trial No. 63 of 1991. The accused-Appellant is in jail. He shall serve out the sentence.