
(2008) 07 AHC CK 0038
In the Allahabad High Court
Case No : Criminal A. No. 1348 of 1981

Matganjan and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2009) 2 ACR 1673

Hon'ble Judges : Vijay Kumar Verma, J; Sushil Harkauli, J

Bench : Division Bench

Advocate : G.S. Chaturvedi, A.S. Pandey, R.C. Upadhyay, V.P. Srivastava, A.K. Shukla, A.K. Misra and P.V. Singh, for the Appellant; A.G.A., for the Respondent

Judgement

1. This appeal u/s 374(2) of the Code of Criminal Procedure (in short "the Cr. P.C."), is directed against the judgment and order dated 9.6.1981, passed by 1st Additional Sessions Judge, Banda, in S.T. No. 68 of 1980, State v. Matganjan and Ors., whereby convicting the Appellants Matganjan, Shiv Sampat and Krishanpal (hereinafter to be referred as "the accused"), under Sections 302 and 201 both read with Section 34, I.P.C., they have been sentenced to undergo imprisonment for life and three years rigorous imprisonment respectively, and acquitting the Appellant-accused Chukki of the charge u/s 302 read with Section 34, I.P.C. but convicting him u/s 201 read with Section 34, I.P.C., he has been sentenced to undergo rigorous imprisonment for three years.

2. Murder of Radhey, brother of the accused Matganjan, was committed on 29.8.1977. First information report was lodged by the accused Matganjan at P. S. Marka, District Banda on the same day. It was alleged in that F.I.R. that on 29.8.1977 at about 10.00 a.m., first informant Matganjan Prasad, his brother Radhey and Krishnapal s/o Shiv Poojan residents of village Mau, had gone to take bath in the river in eastern side of the village. After about 10-15 minutes, Shamsher Singh s/o Shiv Mangal Singh and Amar Singh s/o Chunna Singh,

residents of Amaliha Purva and Bhagat s/o Ram Kumar Lohar r/o Mau, having lathi, barchhi and guns came there. Shamsheer Singh and Amar Singh exhorted saying that "tumhare bap pradhani ke chunav men mere dada Ram Sewak ke khilaph petition ka mukdama dayar kya hai, apne bap ko mana kar do, wah mukdama utha le, nahin to aaj tumhen jan se mar denge." On this Radhey said that "Yah mamala mukadma baji ka hai, jo jeetega wah pradhani payega." Thereafter Bhagat said that "aise nahi manega, Binda ke dono ladakon ko aaj khatam kar do, taki taakat kam ho jave." On this exhortation, Shamsheer Singh and Amar Singh fired on the first informant and his brother Radhey by guns, due to which Radhey sustained injuries and he fell down there. Matganjan and Krishnapal fled away from there and taking the side of the bandhi of fields, they began to raise noise. When Radhey fell down, Bhagat Lohar assaulted him by lathi. The assailants continued to fire shots and leaving Radhey in dead condition, they went away to their houses. Due to fear of the assailants, no body came there from nearby fields.

3. Leaving the dead body of Radhey at the place of incident in supervision of village chaukidar and other persons, Matganjan Prasad went to P. S. Marka and handed over the written report, which was scribed by himself. On the basis of that written report, the then head moharrir Amar Nath Singh prepared chik F.I.R. Ext. Ka-1 on 29.8.1977 at 3.00 p.m. and registered a case u/s 302, I.P.C. at Crime No. 68 of 1977 against Shamsheer Singh, Amar Singh and Bhagat, entry of which was made in G. D. No. 18 Ext. Ka-2 at the same time.

4. S. I. Arun Kumar Shukla (P.W. 1) was posted at P. S. Marka. On registration of the F.I.R., he reached the place of incident at about 7.30 p.m. on the same day, but due to darkness, inquest proceeding on the dead body of the deceased Radhey was conducted on 30.8.1977 at 5.30 a.m., during which inquest report Ext. Ka-4 and other connected papers Ext. Ka-5 and Ext. Ka-6 were prepared and thereafter the dead body in sealed condition was sent through the constable Shri Ram Sharma for post-mortem examination, which was conducted by Dr. S. K. Zama (P.W. 8) on 31.8.1977 at 9.00 a.m. According to the post-mortem report Ext. Ka-12 the following ante-mortem injuries were found on the person of deceased:

1. A lacerated wound 5 cm. x 1 1/2 cm. x scalp, on the front of the right side of the head, 5 1/2 cm. above the eye brow.
2. A lacerated wound 7 cm. x 1 1/2 cm. x scalp, on the right side of the head 10 cm. above the ear.
3. A lacerated wound 4 1/2 cm. x 1 cm. x scalp on the top of the left side of the head 10 cm. above the ear.
4. A contused wound 8 cm. x 3 cm. x scalp on the back of the (paper torn) in the middle.
5. A contused wound 3 cm. x 1 cm. x scalp on the right side of the head 8 cm.

above the ear.

6. Multiple contusions over an area of 11 cm. x 7 cm. on the paper torn side and back of the upper third of the (paper torn) arm.

7. An extremely lacerated gun shot wound 9 cm. x 4 cm. x (paper torn) cavity on the left side of the chin the (paper torn) under which the lower jaw have lies (paper torn).

8. An extremely lacerated gun shot wound 6 cm. x 5 (paper torn) muscles on the front inner side of the left knee.

9. A gun shot wound of entrance 2 cm. x 2 1/2 cm. (paper torn) on the upper part of the left side of the chest 10 cm. above the nipple and at 11 O'clock position.

10. A gun shot wound of entrance 2 cm. x 2 cm. x chest (paper torn) on the upper part of the left side of the back between the shoulder blade and the spine.

11. Multiple abrasions over an area of 24 cm. x 17 cm. over the middle of the back.

The death of deceased was caused about two days ago due to shock and haemorrhage, as a result of ante-mortem injuries.

5. S. I. Arun Kumar Shukla (P.W. 1) after conducting inquest proceeding on the dead body, collected blood stained and simple earth from the place of incident and blood stained cloths of Radhey were also taken into possession and fard Ext. Ka-7 was prepared in this regard. After making spot inspection, site plan Ext. Ka-8 was also prepared by S.I. Sri Shukla.

6. Station Officer S. I. Rai Bhagan Singh also reached the place of incident at about 11.00 a.m. on 30.8.1977. The investigation was taken up by him in his hands. Thereafter, on the application of Ram Sewak (P.W. 4), the investigation was transferred to C.B.C.I.D. by U. P. Government and by the order dated 27.10.1977 of S. P. C.B.C.I.D., the investigation was handed over to Inspector Beni Singh, who conducted preliminary investigation between 30.11.1977 to 3.12.1977, during which he prepared fresh site plan Ext. Ka-13. Statements of some witnesses were also recorded by him. Rest investigation was carried out by Inspector Darbari Singh (P.W. 10), who on completion of the investigation found the case against the persons named in the F.I.R. Ext. Ka-1 false and finding the complicity of the Appellants-accused in incident of murder of Radhey, submitted charge-sheet Ext. Ka-14 against them, in which the accused Krishna Pal and Shiv Sampat were shown as absconder, who subsequently surrendered in the Court.

7. On the case being committed to the Court of Session for trial, charge under Sections 302 and 201 both read with Section 34, I.P.C. were framed against all the accused-Appellants, to which they pleaded not guilty and claimed to be tried.

8. The prosecution in order to prove its case, examined ten witnesses in all.

P.W. 1 S.I. Arun Kumar Shukla recognizing the hand writing and signature of the then Head Moharrir Amar Nath Singh of P.S. Marka has proved chik F.I.R. Ext. Ka-1, copy of G. D. No. 18 regarding registration of case Ext. Ka-2 and copy of G. D. No. 19 time 3.45 p.m. dated 29.8.1977 Ext. Ka-3. He has also proved inquest report Ext. Ka-4, photo lash Ex. Ka-5 and chalan lash Ext. Ka-6, fard Ext. Ka-7, site plan Ex. Ka-8 and copy of G. D. No. 17 time 7.30 p.m. dated 30.8.1977 Ext. Ka-9.

P.W. 2 constable Uma Nath was posted in P.S. Marka. He had sent three bundles containing the case property of this case for examination to Forensic Science Laboratory, Agra.

P.W. 3 head constable Sri Ram Sharma had carried the dead body of deceased Radhey for post-mortem examination on 30.8.1977 and after post-mortem examination on the dead body on 31.8.1977, a sealed packet containing case property was brought by him to P.S. Marka which was deposited there on 1.9.1977, vide entry in G.D. No. 11, dated 1.9.1977 Ext. Ka-10.

P.W. 4 Ram Sevak had sent the application dated 19.9.1977 Ext. Ka-11 to the Chief Minister, Uttar Pradesh, on the basis of which investigation of the case was transferred to C.B.C.I.D. He is not the eye-witness of the incident.

P.W. 5 Ram Dayal, P.W. 7 Bhagat and P.W. 9 Lotan Singh are said to be the eye-witnesses of the incident of murder of Radhey.

P.W. 6 Ganesh was the village chaukidar at the relevant time. The accused Matganjan is said to have made extra-judicial confession before him regarding committing the murder of his brother Radhey.

P.W. 8 Dr. S. A. Zama had conducted post-mortem examination on the dead body. He has proved post-mortem report Ext. Ka-12.

P.W. 10 Inspector Darbari Singh, is the Investigating Officer of C.B.C.I.D., who has proved site plan Ext. Ka-13 and charge-sheet Ext. Ka-14.

9. In their statements recorded u/s 313, Cr. P.C., the accused persons denying their participation in the incident of murder of Radhey have further stated that due to enmity, they have falsely been implicated in this case.

10. In defence, the Appellants-accused did not examine any witness, but they filed certain documents.

11. The learned trial court having considered the evidence on record, convicted and sentenced the Appellants-accused as mentioned in para 1 above. Hence, this appeal.

12. We have heard Sri G. S. Chaturvedi, learned senior advocate, assisted by Sri A. S. Pandey appearing for the Appellants, learned A.G.A. for the State and perused the impugned judgment and entire evidence on record carefully.

13. The trial court has recorded the conviction of the Appellants-accused on the

basis of the eye-witness account of these witnesses, namely Ram Dayal (P.W. 5), Bhagat (P.W. 7) and Lotan Singh (P.W. 9) and alleged extra-judicial confession of the accused Matganjan which is said to have been made before P.W. 6 Ganesh just after the incident of murder. We have carefully gone through the statements of these witnesses, but their testimony does not inspire confidence and it is not safe to place reliance on their testimony.

14. So far as the alleged extra-judicial confession of the accused Matganjan before P.W. 6 Ganesh is concerned, no reliance can be placed on the testimony of this witness, because he did not inform Sub-Inspector Arun Kumar Shukla (P.W. 1) regarding the said incident at the time when he had come to conduct inquest proceedings on the dead body of deceased. He did not inform the station officer of P.S. Marka S.I. Rai Bhagan Singh also about the alleged confession of accused Matganjan at the time when the said station officer had come in the village on 30.8.1977 and started investigation. P.W. 6 did not lodge any F.I.R. also at the police station informing that Matganjan with the help of other accused has committed the murder of his brother Radhey. It is stated by P.W. 6 Ganesh in his cross-examination at page 34 of the paper-book that he had sent his nephew Lala to lodge the report, but no report was lodged by said Lala. The prosecution has not examined Lala as witness during trial to lend support to the statement of P.W. 6 Ganesh. Why the accused Matganjan would confess his guilt of committing heinous crime of murder to a person, who was not in the position to save him. Therefore, the theory of making extra-judicial confession by the accused Matganjan before the witness Ganesh is not worthy of reliance.

15. The witnesses Ram Dayal, Bhagat and Lotan Singh claim themselves to be the eye-witnesses of the incident of committing murder of deceased by the Appellants-accused. On careful scrutiny of the testimony of these witnesses, it is revealed that there is material inconsistency in their statements with medical evidence. All these witnesses have categorically stated that the accused Chukki had assaulted the deceased Radhey by means of pharsa, but even a single incised wound was not found on the person of deceased Radhey at the time of post-mortem examination. We have already extracted about the ante-mortem injuries which were found on the person of deceased. None of these injuries was caused by pharsa. Therefore, owing to this material inconsistency in ocular and medical evidence in this case, no reliance can be placed on the testimony of above-mentioned so called eye-witnesses.

16. In addition to the material inconsistency in ocular and medical evidence as mentioned hereinabove, there are some other material contradictions also in the testimony of aforesaid witnesses. P.W. 5 Ram Dayal and P.W. 9 Lotan Singh have stated in their statements that when the deceased Radhey was called at the house of Krishnapal, a panchayat was being held there on the matter of partition between Radhey and his brother Matganjan and during that panchayat, altercation started between Radhey and Matganjan, due to which the Appellants-accused are said to have committed the murder of deceased Radhey, but the

theory of holding the panchayat and starting altercation therein has been falsified from the statement of P.W. 7 Bhagat, who has stated that no panchayat was being held on the date of incident. Therefore, due to this material contradiction also, it is not safe to place reliance on the testimony of aforesaid so-called eye-witnesses of the incident of committing murder of Radhey by the accused persons. P.W. 7 Bhagat has stated in this cross-examination at page 37 of the paper-book that marpeet had taken place for about 10-15 minutes and during this period, lathi and pharsa continued to be wielded, but as stated hereinabove, even a single injury caused by pharsa was not found on the person of deceased at the time of post-mortem examination. It is not the case of prosecution that pharsa was used as lathi by the accused Chukki. Absence of any pharsa injury on the person of deceased shows that these so-called eye-witnesses had not seen any incident and no such incident as alleged by them had taken place.

17. The report about committing the murder of deceased Radhey by the Appellants-accused was made by way of sending application to the Chief Minister of Uttar Pradesh by P.W. 4 Ram Sewak. The said application was sent after more than 20 days from the date of murder of Radhey. Prior to that, the accused Matganjan had already lodged a report at P. S. Marka, regarding committing the murder of this brother by Shamsher Singh, Amar Singh and Bhagat. Samsher Singh and Amar Singh are the real nephew of P.W. 4 Ram Sevak. Samsher Singh is the son of Shiv Mangal and Amar Singh is the son of Chunna Singh, who are real brothers of P.W. 4 Ram Sevak as admitted by him in his cross-examination at page 16 of the paper book. It appears that with a view to save his real nephews and due to enmity of the election petition, which was filed by the father of Matganjan, P.W. 4 Ram Sevak had sent a false report to the Chief Minister of Uttar Pradesh, on the basis of which, the investigation was transferred to C.B.C.I.D. and ultimately leaving Shamsher Singh, Amar Singh and Bhagat, who were arrayed as accused in the first information report lodged by Matganjan on 29.8.1977, charge-sheet was submitted against the Appellants-accused. Had Ram Sevak come to know that the murder of Radhey was committed by the Appellants-accused and his dead body was thrown in the river as alleged by the aforesaid so-called eye-witnesses, then he (Ram Sevak) could sent the report on the same day to the police or some other higher authorities, but he kept silent for more than 20 days and after a long gap an application was sent on 19.9.1977 to the Chief Minister of Uttar Pradesh. The story, which was concocted by Ram Sevak in his application Ext. Ka-11 could not be proved by the prosecution during trial, because as mentioned above, the testimony of the witnesses, who have been examined to prove that story is not worthy of reliance and on the basis of their testimony, it is not established that such incident as stated in the report Ext. Ka-11 had occurred. On the contrary, after the incident of committing the murder of deceased Radhey, his brother Matganjan had lodged the F.I.R. at P.S. Marka without any undue delay. Therefore, on this ground also, it was not safe to convict the Appellants-accused on the basis of the testimony of abovementioned so-called eye-witnesses and alleged extra-judicial confession of accused

Matganjan before P.W. 6 Ganesh, but the learned trial court did not properly appreciate the evidence and recorded the conviction of the Appellants-accused for the murder of Radhey, although the testimony of above mentioned witnesses is not worthy of credence.

18. For the reasons mentioned hereinabove, the conviction and sentence of the Appellants-accused cannot be sustained.

19. Consequently, the appeal is allowed. The impugned judgment and order are set aside and the Appellants-accused Matganjan, Shiv Sampat, Krishanpal and Chukki are hereby acquitted of all the charges. Their surety bonds are cancelled and the sureties are discharged.