

(2007) 12 AHC CK 0052
In the Allahabad High Court

Meghraj, Man Singh, Damber Singh and Basdeo (In Jail)	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 13-12-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 12 AHC CK 0052

Hon'ble Judges : R.K. Rastogi, J;K.S. Rakhra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.S. Rakhra and R.K. Rastogi, JJ.—This is an appeal u/s 374(2) Cr.P.C. by appellants Meghraj, Man Singh, Damber Singh and Basdeo against the judgment and order dated 7.3.1981 passed by IX Addl. Sessions Judge, Agra in S.T. No. 147 of 1980, convicting the appellants u/s 302/34 IPC and sentencing them to imprisonment for life.

2. The incident relates to village Mundiapura within police circle Achchnera of district Agra where on 18.6.1979 Smt. Omwati, a young lady of 25 years wife of Omveer and daughter of Gangadhar P.W.1 was stabbed and done to death. The prosecution claims that the incident took place at about 1 a.m. in the night near the Chaupal of appellant Damber Singh resident of same village and the lady was killed by the present appellants. The incident was said to have been witnessed by her brother Charan Singh P.W.2 and real uncle Gopal Singh P.W.4. Her father Gangadhar had gone to attend some marriage in some distant village. The information about the incident was sent to him through one Brij Pal and on the information being received, Gangadhar returned to the village and the incident was narrated to him by his brother, his son and eye witnesses. On the basis of this, he lodged the report (Ex.ka-2) prepared by Sobaran Singh at the police station on 18.6.1979 at 9.05 hours.

3. In the FIR it was stated by him that the deceased Omwati was married to

Omveer of village Ohara. There was some matrimonial dispute between husband and wife. She was beaten and was pushed out of the house by the in-laws about 8-9 months prior to the date of incident. After some time, the in-laws tried to bring her back but the informant Gangadhar refused to send her back. The in-laws then gave threat to Gangadhar of dire consequences if Omwati was not sent to her matrimonial home. On the fateful day, the informant had gone to village Barakhurd to attend one marriage and in his absence the deceased Omwati had gone to attend a marriage at the house of Durg Singh in village Mudiapura. Incidentally, there were several marriages on that day in different houses in village Mudiapura. After attending the marriage at the house of Durg Singh, she was going to see Baarat at the house of Pema Khatik and in the way she was intercepted by all the appellants near the Chaupal of appellant Damber Singh. They caught hold of her and pulled her towards "Babool" tree standing by the side of passage. When she raised alarm it attracted the attention of Gopal Singh P.W.4, Charan Singh P.W.2, Nahar Singh and some other persons who were also passing through the same passage at that time. It was 11 O clock in the night. These people saw that appellants Damber Singh and Man Singh son of Pratap Singh caught hold of Omwati and other appellants Meghraj and Basudeo made assault on her with knife. All this was seen in the light of torches which Charan Singh and Gopal Singh were carrying. After the assault, the culprits ran away leaving the victim on the spot in injured condition. Here brother and uncle and other witnesses who had seen the occurrence and were present on the spot then brought the victim to the house of first informant. They tried to make arrangement of transport for carrying the victim to the hospital but could not succeed. In the mean time at 5" O clock she died due to injuries suffered by her. Information of this was conveyed to Gangadhar through Brij Pal. It was also mentioned in the FIR that on the spot, cycle, towel, scarf and "Baniyan" are lying.

4. H.C. Raghunath Singh P.W.6 registered the report as crime No. 116 of 1979 u/s 302 IPC against the four accused. Initially the investigation was taken up by Sri Rav Singh P.W.3 who had gone to the place of occurrence and had held inquest Thereafter investigation was taken over by Sri Babu Lal Sharma P.W.7 on the same day.

5. The dead body of Omwati was sent for post mortem examination through Naresh Kumar and the autopsy was performed by Dr. Laxmi Narain Sharma P.W.8 on 19.6.1979 at about 4 p.m.

6. The doctor found the following ante mortem injuries on the body of deceased:

1. Stab wound 3/4" x 4/10" x chest cavity deep. 4" above right nipple on chest.
2. Stab wound 1/2" x 3/10" x chest cavity deep 1/2" below injury No. 1.
3. Stab wound 1/2" x 3/10" x abdomen cavity deep right side abdomen.

In the internal examination, 2nd and 4th right ribs were found fractured. Pleura, both lungs and peritoneum were found ruptured. Kidney was found ruptured and

lacerated. The stomach was found empty. Small and large intestines were found empty.

The lady at the time of murder was in the stage of advanced pregnancy and full formed female baby was found in the uterus.

In the opinion of doctor, the death had occurred two days prior to the post mortem examination and cause of death was shock and haemorrhage as a result of ante mortem injuries.

7. Rav Singh P.W.3 was the first investigating officer, who held inquest and visited the place of occurrence where Omwati was allegedly killed. From there he collected one towel Ex-2, Baniyan Ex-3, Scarf Ex-4 and also cycle Ex-1. From the same place, he also found bloodstained earth and collected sample thereof. This witness did not find any blood on the ground at the house of Gangadhar where body of Omwati was shifted from the place of occurrence. The place of occurrence was about two and half furlongs away from the house of Gangadhar.

8. After recording the statements of the witnesses and going through the post mortem examination report and the circumstances, the Investigating Officer found that prima facie the case against the four appellants was made out and accordingly he submitted charge sheet.

9. Before proceeding further it is to be mentioned that appellants Meghraj and Man Singh are cousin brothers and are residents of village Dehara police station Kumer of district Bharatpur in Rajasthan. They are Khandani of Omveer, the husband of deceased. Appellant Damber Singh is also their relation which has been admitted by Charan Singh P.W.2 in his cross examination. It may be further mentioned here that the village Barakhurd where the first informant had gone to attend the marriage was about 25 miles from Mudiapura. From the place of occurrence Kerawali it is about two furlongs and village Ujrai to which appellant Basdeo belongs was about 8-9 miles. Village Dehra to which appellants Meghraj and Man Singh belong is about 27 miles from Mudiapura. Thus except Damber who is resident of Mudiapura, the other three appellants are residents of distant villages and two of them i.e. Meghraj and Man Singh are residents of a village quite far away. i

10. It may also be mentioned here that Gangadhar P.W.1 had admitted that at Kerawali there is police out post and there is also a government dispensary where Dr. Naresh Kumar was posted. There is another Dr. Chahar who was also available at Dharmshala near railway station. The dispensary of Dr. Chahar is about 2-3 furlongs from the house of Gangadhar P.W.1.

11. It may further be mentioned here that the appellant Basdeo claims that he was not known to the eye witnesses. He went to the extent of saying that appellants have been falsely implicated at the instance of Sobaran Singh who is scribe of FIR. it was suggested that Gangadhar did not want to send his daughter back to her matrimonial home and wanted to settle her marriage in some other

village and at the father's house she got pregnant. Defence suggestion was that she was killed by some persons and out of enmity the appellants have been falsely implicated.

12. In order to prove the allegations, the prosecution examined eight witnesses in the trial.

13. Although the prosecution has named Gopal Singh, Mahendra, Charan Singh and Nahar as eye witnesses amongst others, only two i.e. Charan Singh and Gopal Singh have been examined as P.W.2 and 4. As stated earlier they are brother and uncle of the deceased. They have tried to fully support the prosecution story. Both of them claimed that they were separately going towards the house of Pema Khatik to see Baarat and incidentally, when they reached near Chaupal of Damber Singh they heard shriek of victim and ran towards the place of occurrence and saw the appellants giving knife blows. Gangadhar P.W.1 is father of the deceased. He deposed that he had lodged FIR which was prepared by Sobaran Singh on his direction. He also stated that he was conveyed about this murder through Brijpal at Barahkhurd.

14. All other witnesses examined by the prosecution are formal witnesses. P.W.1 Gangadhar is the first informant. Babu Lal Sharma P.W.7 is the second investigating officer. HC Raghunath Singh P.W.6 registered the crime and Naresh Kumar P.W.5 is the person through whom the body of the deceased was sent for autopsy. Dr. Laxmi Narain Sharma P.W. 8 conducted the post mortem examination of the dead body, the result of which has already been mentioned in the body of judgment.

15. D.W.1 A.P. Srivastava was examined by the accused persons in their defence. He is Sub Divisional Magistrate who conducted test identification parade of appellant Basdeo in district jail Agra on 12.5.1980 and prepared his report Ex.kha-3. It is significant to note that out of witnesses examined by the prosecution who had participated in the test identification , Charan Singh P.W.2 had rightly identified appellant Basdeo whereas other witness P.W.4 Gopal Singh failed to identify him and placed hands on wrong person.

On the basis of above evidence, the trial court held the prosecution story to be reliable and held the appellants guilty and convicted them, u/s 302/34 IPC and sentenced them to imprisonment for life.

16. We have heard Sri R.B. Singh and Sri Sudhindra Kumar Singh, Amicus Curiae for the appellants and Sri Kamlesh Kumar Tiwari, AGA appearing for the State. We have also carefully gone through the entire record and perused the judgment of the trial court.

17. The impugned judgment has been challenged on the ground that the appellants had no motive for the commission of crime and that the alleged eye witnesses namely Charan Singh and Gopal Singh examined by the prosecution had not seen the occurrence. The argument of Sri Sudhindra Kumar Singh was

that the deceased lady might have gone to answer nature's call in the late evening where she was assaulted, and killed. No body could know about it and in the morning when her dead body was detected, a false story was concocted implicating the appellants. It was further argued that FIR was ante timed and unnecessary time was spent in order to have consultation and cook up false story. It was argued that Omwati being in advanced stage of pregnancy could not have gone out in the village at 1'O clock in the night and that too all alone to witness a Baarat at another's house in the village. Conduct of Charan Singh and Gopal Singh who are closely related to Omwati was also pointed out to be unnatural.

18. Learned AGA, on the other hand, argued that both the eye witnesses Charan Singh and Gopal Singh are of the same village. Their presence at the time of occurrence was very probable. There is no reason to disbelieve them when they claim that they had seen the assault and thereafter they had shifted the victim from the place of occurrence to the house of her father Gangadhar.

19. After examining the evidence in the light of arguments being raised by both the parties, we are of the opinion that the case would depend on the question whether Charan Singh and Gopal Singh had seen the incident or not. It is to be kept in mind that the incident took place at 1'O clock in the night and place of occurrence was about two and half furlongs away from the house of Charan Singh. Their presence as stated by them near the place of occurrence was only by co-incidence. The circumstances relating to the case however go to show that presence of these two persons at the place of occurrence at the relevant time is highly doubtful. The argument that victim was killed by unknown persons at unknown time and the dead body was found in the morning finds support from various circumstances.

20. As mentioned earlier village Kerawali is about two furlongs from Mudiapura where the incident took place. P.W.1 Gangadhar has admitted that medical facility was available at Kerawali. He has named two doctors; one in the government dispensary and another private doctor at Kerawali. His statement further shows that on the relevant date there were several persons in the village who owned tractor and one of the villagers had got Metador. The excuse given in not taking the victim to the doctor for treatment for want of means of transport therefore is totally false and can not be accepted. Even if for a moment if it is accepted that they could not make attempt to arrange some transport the victim could have been shifted to Kerawali by lifting her or carrying her on a cot. The evidence led by the prosecution is that Omwati was shifted from the place of occurrence to the house of Gangadhar and remained there for four hours during which attempt was made to arrange for transport and thereafter she died. We fail to understand if she could be shifted to the house of Gangadhar which was about two and half furlongs away from the place of incident why she could not have been shifted to Kerawali where medical assistance was available and her life could be saved. Failure on the part of Charan Singh and Gopal Singh or any body

else in not taking her to the doctor in time only shows that they had not seen the assault and were not present there.

21. Another circumstance which goes to strengthen the above inference is that there was no blood at the house of Gangadhar. The witnesses claim that where Omwati was kept at the house of Gangadhar, the ground was stained with blood. Incidentally, Rav Singh S.I. who had first visited the house of Gangadhar and held inquest there, did not find any blood on the ground. There is also no evidence to show that there was any blood on the cot on which she was kept. These circumstances would also suggest that entire bleeding had completed at the place of occurrence itself and it was much after the victim had been killed that people came to know about her death.

22. We also find force in the argument of learned Amicus Curiae that it was highly improbable for a young lady of about 25 years of age and in advanced stage of pregnancy to move out alone in the village at 1 "0 clock in the night to witness a Baarat in neighbourhood. It is to be noted that her brother Charan Singh and uncle Gopal Singh had also gone to see Baarat but separately.

23. The prosecution story that the lady was going to see Baarat in the night appears also to be improbable in view of post mortem examination report submitted by Dr. Laxmi Narain Sharma P.W.8. Prosecution claims that deceased lady had first gone to the house of Durg Singh to attend the marriage and thereafter she was going towards the house of Pema when the incident took place. If it was so, in all probabilities she must have taken meals prior to the time of incident either in the marriage at Durga Singh's house or at her own house. There must have been contents of food, digested or undigested in small intestine. Surprisingly enough, the doctor found the stomach, large and small intestine to be wholly empty. This conforms to the suggestion of the defence that lady might have gone out in the evening before taking her meal, to answer nature's call i.e. for defecation and after she had done so she was assaulted and killed.

24. In addition to above circumstances, we find that the FIR had lost effect of spontaneity. The incident took place at 1"0 clock in the night. It was witnessed by brother and uncle of the deceased. The police station was about three miles away and police out post was at a distance of two and half furlongs from village Mudiapur. Several persons owned tractor. In these circumstances, there was no real difficulty in contacting the police immediately. The explanation given by the witnesses that since Gangadhar father of the deceased was away from his village, therefore FIR was not lodged in time appears to be lame excuse to explain the delay. The witnesses who had seen the occurrence and those who had been examined by the prosecution were not strangers. If father could not lodge the FIR the brother aged about 30 years or uncle could have easily lodged the FIR. The delay in lodging of the FIR therefore appears to be unexplained and gives opportunity to have consultation prior to lodging of report.

25. A comparison of statements given by Charan Singh and Gopal Singh in the trial court also shows that there are some material contradictions. Some time Charan Singh states that he was going to the house of Pema and some time he states that he was returning from there when the occurrence took place. He once says that he was accompanied by Mahendra and at the other place he says that Nahar Singh was in his company whereas the prosecution claims that Nahar Singh was coming separately in the company of Gopal Singh.

26. According to the prosecution, appellant Man Singh and Damber Singh had caught hold the victim whereas Meghraj and Basdeo were giving knife blows to her. The witnesses in their statements have given conflicting statements in this regard. P.W.4 Gopal Singh in para 2 of examination in chief states that appellants Basdeo, Meghraj and Man Singh had given knife blows to the victim whereas Damber Singh and Meghraj had caught her hold. Meghraj, according to the prosecution, is a person who was attributed the role of stabbing and other two appellants were attributed the role of giving knife blows.

27. In addition to above, it is to be kept in mind that there was no direct motive for the appellants to have committed this crime nor had any motive been alleged by the prosecution. The manner in which FIR was lodged only suggests that husband or in-laws of Omwati might have been interested in eliminating her but we fail to understand that how Meghraj and Man Singh who are residents of the village at a distance of 26 miles from the place of occurrence and Basdeo who is resident of a village which is at a distance of 10 miles from the place of occurrence would be interested in killing Omwati. There is also no apparent reason why they collected on the date of incident at the house of Damber Singh. Further no evidence had been led by the prosecution to show as to whose cycle, towel, scarf etc. were recovered from the place of occurrence. Since Charan Singh and Gopal Singh claim to be eye witnesses they should have explained the presence of these things at the place of occurrence specially when their presence was specifically mentioned by the first informant in the FIR itself. Want of explanation in this regard gives strength to the suggestion that the incident might have taken place in some other manner.

28. There is no evidence on record to show that Charan Singh, Gopal Singh or any other witnesses who had seen the occurrence and with whose help the deceased was shifted to her father's house, had received any bloodstains on their clothes which could have suggested that they had either seen the occurrence or reached there immediately after the incident.

29. On the basis of above observation, we are of the definite opinion that the prosecution in this case has failed to prove the charge against the appellants beyond doubt. It is not safe to convict the appellants on the basis of above discussed evidence.

30. We, therefore, allow the appeal and set aside the conviction of appellants Meghraj, Man Singh, Damber Singh and Basdeo for the offences punishable u/s

302/34 IPC and sentences passed thereunder. Their bail bonds are discharged and they need not surrender.

31. Copy of this judgment be certified to the trial court for information and necessary action.

32. Sri Sudhindra Kumar Singh, Amicus Curiae who has assisted the court and prepared the case very nicely shall get Rs. 4000/- for the assistance in the case.