
(1991) 08 AHC CK 0003
In the Allahabad High Court
Case No : Criminal Appeal No. 1057 of 1984

Panna Lal alias Panna and Others APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 07-08-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 307, 34

Citation : (1991) 15 ACR 619

Hon'ble Judges : S.R. Bhargava, J; P.S. Gupta, J

Bench : Division Bench

Advocate : P.M.N. Singh, for the Appellant; R.C. Yadav, for the Respondent

Final Decision : Allowed

Judgement

S.R. Bhargava, J.—This appeal is directed against judgment and order dated 5th April, 1984, passed by Shri C.P. Misra, the then III Additional District and Sessions Judge, Varanasi, convicting Appellants Panna Lal alias Parma, Chhotey Lal, Kailash and Bhagwanta alias Kallu u/s 302 read with 34 IPC and u/s 201 read with 34 IPC and sentencing each of them to rigorous imprisonment for life u/s 302/34 IPC and rigorous imprisonment for two years u/s 201/34 IPC both the sentences being concurrent.

2. All the four Appellants and deceased of the case Pancham Pandey were residents of Kachaharia, Police Station Rohania, District Varanasi, Chandrakesh Pandey, PW 1, is nephew of deceased Pancham Pandey, Appellant Panna is said to be uncle of Appellant Balwanta (Bhagwanta). It is further alleged that Balwanta is also known as Kallu. He and Panna used to live together. Then it is alleged by the prosecution that the Appellant Kailash was friend of Appellants Panna and Balwanta. Deceased Pancham Pandey and Chandrakesh. PW 1, used to live together. Then it is alleged by the prosecution that the Appellant Chhotey Lal lodged a case u/s 307 IPC against deceased Pancham and others and that case was pending at that time.

3. According to the First Information Report of the case, Exhibit Ka 1, the murder of Pancham Pandey took place on 9th January, 1981 at 9:30 P.M. in isolated place near the well of Moti Lal within local area of village Kachaharia, Harnathpur is said to be a hamlet situate near the well of Moti Lal. Further according to the prosecution story, as given in the First Information Report, at the time of occurrence deceased Pancham Pandey, his nephew Chandrakesh Pandey and one Sullu of the village were returning to their village from Rajatalab Parao. When they reached near the well of Moti Lal all the four Appellants suddenly emerged from "Arhar" field, encircled Pancham Pandey. Appellant Panna exhorted Chhotey Lal to cut Pancham Pandey. Panna, Balwanta and Kailash caught hold of the cycle of the deceased. Chhotey Lal inflicted "Chhura" blows on the neck of the deceased who succumbed to his injuries. Appellants intimidated the witnesses and threatened them with life. Raj Bahadur, PW 2, and one Munnu Giri arrived at the scene with their torches. The Appellants tied the dead body of the deceased to the cycle and dropped the dead body and the cycle in the well. Incident was witnessed by Chandrakesh, Sullu, Raj Bahadur and Munnu. Appellants were successful in terrorising the witnesses to the extent that during dark night witnesses could not dare go to Police Station for lodging report.

4. A written report was recorded by Chandrakesh Pandey, PW1, himself. It is said that on the following morning i.e. on 10th January, 1991 at 7:05 A.M. he produced written report at Police Station; distance between the spot of occurrence and Police Station being 10 kilometres. Chick Report was prepared in terms of written report and case was registered against the named assailants.

5. Then according to the prosecution story next morning Investigating Officer Shivash Chandra Misra, PW 7, in whose presence the case was registered, commenced the investigation at the Police Station and with the copy of the report he proceeded to the spot of occurrence along with Chandrakesh Pandey, Raj Bahadur and others. He interrogated the witnesses and inspected the spot. He prepared site plan, Exhibit Ka 14. He collected blood stained and ordinary earth and sealed them in separate tins. Then it is said that he got the dead body recovered from the well. He took the cycle and rope in the police custody. He made other recoveries from the spot. He got the Inquest Report, Exhibit Ka 8, and other papers including challan Exhibits Ka 7 and Ka 9, prepared by his companion Sub Inspector Vinod Kumar Singh. Significant features of the Inquest Report and Challan were that in Inquest Report eye witness Munnu was one of the Panchas and the weapon used in the crime was said to be "Gandasi" (small chopper), In the challan time of death was shown as unknown. Then according to the prosecution story the Investigating Officer recovered small chopper used in cutting wool of woollen carpets and he described it as "Chhura Gandasi type" from the gram field near the well. It was blood stained. The Investigating Officer prepared Recovery Memo, Exhibit Ka 16. It is disputed in this case that this weapon was not sent to chemical examiner or serologist.

6. On 11-1-1981 Dr. A.K. Rastogi, a Doctor in Government Hospital, Varanasi,

conducted autopsy on the dead body of deceased Pancham Pandey at 3 P.M. He estimated probable time since death as about 1, 1/2 days and age of the deceased as 47 years. He found following ante-mortem injuries on the dead body:

1. Incised wound 13 cm. x .2 cm. x bone deep on front and upper part of neck. Just above the thyroid cartilage larynx and oesophagus cut.
2. Incised wound 4, 1/2 cm. x 1/2 cm. x muscle deep on upper part of neck right side 3, 1/2 cm. below right ear.
3. Incised wound 3, 1/2 cm. x 1 cm. x muscle deep on front neck and right to the middle 2 cm. below from injury No. 1.
4. Incised wound 2, 1/2 cm. x 1/2 cm. x skin deep. 1, 1/2 cm. below from injury No. 3.
5. Abraded contusion 16 cm. x 7 cm. on right side forehead and face and cheek.
6. Abrasion 1 cm. x 1 cm. on back of left elbow.
7. Abraded contusion 4 cm. x 2 cm. on left side of forehead 4 cm. above left eye brow.
7. In internal examination Doctor found the larynx cut just above the thyroid cartilage and found bone fracture on left side. Large vessels and bones of neck were cut on both sides at the level of injury No. 1. In the opinion of the Doctor death was due to haemorrhage and asphyxia as a result of injury No. 1. Doctor prepared post-mortem report Exhibit Ka 2.
8. After completing investigation Investigating Officer submitted charge sheet against the Appellants who were ultimately committed to sessions.
9. In the sessions court Appellants were charged with offences under Sections 302/34 and 201/34 IPC. They pleaded not guilty and claimed trial. Appellant Chhotey Lal was charged with offence u/s 302 IPC simpliciter.
10. For bringing home the guilt against the Appellants the prosecution examined in all nine witnesses.
11. Chandrakesh, PW 1, is the star witness of the case. He disclosed the antecedents and then the incident. He made it clear that the deceased was on cycle. He introduced moon-light at the time of the incident. He narrated that when the deceased was threatened he ran to the gram field where he was felled and caught. Chhotey Lal inflicted several blows on his neck. Then he was brought, tied to cycle and thrown into the well. When he was being thrown into the well Munna arrived at the scene. He proved his written report. In his cross examination he admitted that Munna and Raj Bahadur are uncle of one Amla Giri. In the case u/s 307 IPC Amla Giri, Munna Giri, Raj Bahadur Giri's brother Nakhru Giri and Nanhkoo Giri were accused. Appellants Kailash and others were witnesses against them. That case was started on the report of Appellant

Chhotey Lal. He admitted in his cross examination that during the night of occurrence he did not disclose the names of the assailants. He was cross examined about his written report and he had to admit that he did not know the meaning of word "Ek ba ek".

12. Raj Bahadur, PW 2, left out the first part of the story. His case was that he was going from Petrol Pump to his house. He heard noise and then flashed his three cell torch. He saw Chandrakesh and Sullu standing, frightened and weeping. In torch light he saw the Appellants tying the dead body in a cycle and throwing that in the well. He asked Chandrakesh about the incident. Then Chandrakesh disclosed that the assailants killed his uncle in the gram field by "Chhura". According to this witness Sheo Murat also came to the spot. He was cross examined at length about his alleged presence at the spot. His service at the petrol pump was vehemently denied in suggestion to him. But he admitted that he is a previous convict u/s 302 IPC and was released on parole after serving sentence for about 8 years.

13. Sheo Murat, PW 3, deposed that he heard noises from his village and came to the spot. He saw the Appellants going and uttering that he should run away otherwise he would also be killed. Chandrakesh, Munnu Giri, Raj Bahadur Giri and Sullu were standing there. They told the incident. In his cross examination he said that in the morning following the incident he was not at the spot because he had left the village due to fear.

14. Doctor A.K. Rastogi, PW 4, deposed the autopsy proceedings and his post-mortem report. He further deposed the ante-mortem injuries of the deceased and cause of death. In his cross examination he said that he did not find any sign of water in the dead body.

15. Kalka Prasad, PW 5, was Head Moharrir and a formal witness of preparing Chick Report, Exhibit Ka 11, in terms of Written Report, Exhibit Ka 1.

16. Constable Moharrir Vishram Tripathi, PW 6, registered the case in the General Diary. It is evident that on 10th January, 1981 no other cognizable case before or after the case under consideration was registered. Investigating Officer Shivesh Chandra Misra, PW 7. deposed the proceedings held by him and the papers prepared by him during investigation. He also proved the material Exhibit of the case except the cycle which court witness goes to say has been missing from the Malkhana. He had to admit that he did not send the recovered weapon to chemical examiner or serologist.

17. Vinod Kumar Singh. PW 8, was the witness who prepared Inquest Report, sketch of the dead body and challan etc. He proved papers Exhibits Ka 5 to Ka 9.

18. Constable Chandrika Singh, PW 9, was the escort of the sealed body which he carried for post-mortem.

19. All the Appellants came out with the case that they were falsely implicated on account of enmity arising from the case u/s 307 IPC and other enmities.

20. Appellants did not adduce oral evidence. They only relied upon a chick report.
21. Learned Additional Sessions Judge found the prosecution evidence trustworthy and convicted and sentenced the Appellants as stated earlier.
22. Being aggrieved. Appellants came to this Court in appeal.
23. We have gone through the record closely and heard parties Counsel at length. We feel that the case suffers from concoction, In the Inquest Report eye witness Munnu was a Panch. Yet there was confusion about the weapon which was described as "Gandasi" (small choppers in the First Information Report the weapon was described as "Chhura" (daggar). The Investigating Officer tried to explain the confusion by recovery of "Chhura Gandasi type" used for cutting wool of carpets. According to him at the time of recovery the weapon was blood stained. But it was not sent for chemical examination. Thus we have no assurance about the weapon alleged to have been recovered by the Investigating Officer. So far as the time of occurrence is concerned that too also appears to be shrouded in mystery. In the challan time of death was shown to be unknown.
24. The First Information Report also suffers from concoction. The written report starts with word "Aaj" (today). But it is dated 10th January, 1981. Then it is evident from the cross examination of Chandrakesh, PW 1 that he used some words in the Written Report, meanings of which he did not know. This means that the First Information Report was prepared after deliberations and consultation.
25. Medical evidence is contrary to the prosecution story that the dead body was tied to a cycle and was thrown into a well. Doctor did not find any sign which could have disclosed that the dead body remained in water. Besides the sharp edged weapon injuries there were abrasions and abraded contusion. The explain them improvement was made in the testimony of Chandrakesh Pandey, PW 1, that the deceased was taken into the gram field and there he was thrown on the ground. It is not only embroidery but excludes the probability of the deceased being thrown into the well.
26. Night of occurrence was a dark night. It is admitted in the First Information Report itself that the incident took place in the dark night and so the witnesses could not have courage to go to Police Station. Yet story was brought out by Chandrakesh Pandey, PW 1, that at the time of incident moon light was available. It was "Shukla Paksh Tritya" and the moon light would have disappeared much before the alleged time of occurrence.
27. The place of occurrence was isolated place and the incident took place in night. Witnesses of the case are not natural witnesses. Chandrakesh, PW 1, admitted that in the night he did not tell anything in the village. Having closely scrutinised the testimony of the three witnesses we have grave doubt about their presence at the spot of occurrence. Sheo Murat, PW 3, was not cited in the First Information Report. There was much of embroidery and concoction. The

witnesses of the case cannot be called trustworthy. At any rate Chandrakesh, PW 1, could not have seen the earlier part of the occurrence in darkness and he could not have recognised the real assailants. He could have had aid of light only after the arrival of Raj Bahadur. We are afraid that Raj Bahadur could not be called an independent witness. If his presence is discarded his story disappears. We conclude that the evidence adduced in the case is not reliable and Appellants are entitled to acquittal.

28. In result, this appeal succeeds and all the Appellants must be acquitted.

29. Appeal is allowed. Appellants are acquitted of the charges under Sections 302, 302/34 and 201/34 IPC. Their sentences are set aside. They are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender.