
(2009) 04 SC CK 0004

In the Supreme Court Of India

Case No : Criminal Appeal No. 1254 of 2005

Rajendra and Another

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 2 ACR 1862 : AIR 2009 SC 2558 : (2009) AIRSCW 4459 :
(2010) 1 ALD(Cri) 110 : (2009) CLT 1003 : (2009) 5 JT 305 : (2009) 5 SCALE
423 : (2009) 13 SCC 480 : (2009) 5 SCR 589 : (2009) 3 Supreme 57

Hon'ble Judges : S. B. Sinha, J;R. M. Lodha, J;Mukundakam Sharma, J

Bench : Full Bench

Advocate : Sushil Kumar, P.K. Jain, P.K. Goswami, K.K. Mishra, Vijay Pratap Singh and Aditya Kumar, for the Appellant; R.K. Gupta, Rajiv Kumar Dubey and Kamendra Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The sole surviving appellant, Rajendra (Narpat, Appellant No. 2 having died during the pendency of this appeal) is before us aggrieved by and dissatisfied with a judgment and order dated 23.9.2004 passed by the Division Bench of the High Court of Judicature at Allahabad in Criminal Appeal No. 181 of 1982 affirming a judgment of conviction and sentence dated 20.1.1982 passed by the Vth Additional Sessions Judge, Ghaziabad in Sessions Trial No. 183 of 1981 u/s 302 read with Section 34 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life.

2. The prosecution case, as disclosed in the first information report lodged with the Dadari Police Station by Phoolwati (PW1), wife of the deceased Ratiram on 27.5.1981 is as under:

Ratiram was a Goldsmith. He received some ornaments from the appellant. However, he did not return the same. He had been assaulted a couple of times

by the appellants. He left the village for Kanpur. He has two sons, Govinda and Jahangir Ram. Govinda also went outside the village in 'pursuit of his new field of engagement'.

Appellants are stated to have visited the house of the deceased and made enquiries in regard to his whereabouts from Phoolwati (PW1). Eight days prior to the incident, Govinda had returned home. Phoolwati was again asked as to when the deceased would return to the village. She asked for an assurance that he would not be assaulted. Richhpal who was Pradhan of the village (since acquitted) allegedly gave her such an assurance. Govinda thereafter went to Kanpur to ask the deceased to come back to the village. He reached his village at about 6.00 am in the morning. At about 7 - 7.30 am, the accused allegedly came with Ratiram. Return of the ornaments was demanded to which the deceased replied that he would repay the debt in due course. He was assaulted. One of them put his hand around his neck. He was bodily lifted. While he was being carried, he clutched to the door frame which also came out. He was thereafter said to have thrown in a nearby well. He died of asphyxia.

3. Phoolwati went to the Police Station which was about three furlongs away from the village. A First Information Report (FIR) was lodged at about 7.50 am. In the said FIR, presence of Munna (PW1), Surajbhan (PW3) and Jahangir Ram (PW4), minor son of the deceased was disclosed. The Investigating Officer came to the village. The dead body was taken out of the well at about 10.00 am and was sent for post mortem. In the post mortem, the cause of action for death was stated to be asphyxia due to drowning. No injury on the person of the deceased was, however, noticed.

4. Although in the FIR, the assailants of the deceased were said to be Narpat, Rajendra and Richhpal (Pradhan of the village); Phoolwati (PW1) as also Jahangir Ram (PW4) in their depositions stated that Richhpal did not participate in the commission of the crime and according to them, an unknown person had come with Narpat and Rajendra. In view of the aforementioned statement by PW1, she was declared hostile. Munna (PW2) and Surajbhan (PW3) also did not support the prosecution case in its entirety. PW4, the minor son of the deceased, however, supported the prosecution case.

5. The learned Sessions Judge acquitted Richhpal, accused No. 1, and recorded a judgment of conviction against Narpat and Rajendra and sentenced them to undergo rigorous imprisonment for life. An appeal was preferred thereagainst. On the date of hearing, i.e. 30.4.2007, however, the appellants were not represented. It was again listed on 17.8.2004. As even on that day, nobody appeared on behalf of the appellants, the High Court took up the hearing of the matter and heard the learned Counsel for the State. The judgment of conviction and sentence passed by the learned Trial Judge was affirmed.

6. Mr. Sushil Kumar, learned senior counsel appearing on behalf of the appellant, would submit:

1) PW1, Phoolwati, PW2, Munna and PW3, Surajbhan, having been declared hostile and PW4, the minor son of the deceased having stated that he had deposed as tutored by his mother, the judgment of conviction and sentence cannot be sustained. 2) The prosecution case have not been corroborated by the medical evidence, as the autopsy surgeon did not find any injury on the person of the deceased nor any sign of throttling, appellant is entitled to grant of benefit of doubt..

3) As PW1 had not made any allegation against Richhpal, her evidence cannot be said to be wholly reliable for the purpose of passing a judgment of conviction.

4) It is unlikely that a person having been assaulted for a period of half an hour and having been dragged would not suffer any injury on his person.

7. Mr. R.K. Gupta, learned Counsel appearing on behalf of the State, on the other hand, supported the impugned judgment.

8. A case of this nature, in our opinion, should be given a holistic approach. The deceased and his elder son had to go out of the village to earn their livelihood. The deceased, as is evident from the materials on record, had to leave the village as he had been assaulted by the appellants on a number of occasions. Richhpal was the Pradhan of the village. When he, along with appellants, asked PW1 to see that the deceased should come back, she wanted an assurance that he would not be assaulted. Only when such an assurance was given, the elder son Govinda was sent with a message and the deceased came back to the village from Kanpur. Almost immediately after the deceased had arrived at his house, three persons came and demanded return of the jewellery. When he pleaded his inability to do so, he was assaulted.

It is true that no injury was found on his person but it must be borne in mind that he was assaulted with fists and kicks. Although PW1, in the FIR, stated about throttling, evidently, neck was not pressed to such an extent which would leave a mark of an injury. Both PW1 and PW4 categorically stated that somebody had caught him by the neck and others caught his feet and he was taken near the well and was dropped.

The FIR was lodged almost immediately after the occurrence had taken place. PW1 ran to the Police Station. Although in her cross- examination, Phoolwati, inter alia, stated that a report from her was taken after the post mortem examination, the Investigating Officer was not confronted with any question as regards timing of the lodging of the FIR. In any event, the fact that some report had been lodged which prompted the Investigating Officer to register a case so as to enable him to start the investigation is not in dispute.

In fact, Mr. Sushil Kumar drew our attention to the statement of PW8, Constable Brahmopal Singh, who alleged that the he had gone to the village at about 7.00 - 8.00 in the morning whereafter the dead body was taken out as also the statement of the Investigating Officer, Shri Ramvir Singh (PW6) who had stated

that the dead body was taken out at about 10.00 am. Indisputably, therefore, prior thereto the FIR had been lodged. Indisputably again, the inquest report was prepared at 10.00 am.

9. It may not be correct to contend that the dead body was taken out in between 7.00 and 8.00 am. What was stated by PW8 was that he visited the village in between 7.00 to 8.00 am.

It is evidently a mistake as inquest report was prepared at 10 am. After the FIR was recorded, the Investigating Officer had come to the village. It is, therefore, wholly unlikely that dead body could be taken out in between 7.00 and 8.00 am. We are not pointing this out only to show that the FIR must have been lodged immediately after the occurrence took place and, thus, there was hardly any possibility on the part of PW1, who was a simple and rustic villager, to implicate the appellant herein falsely.

10. The well was situated within a distance of about 10 ft. from the house of the deceased. The house must have been made of bricks and mud as when PW1 brought the fact of uprooting the door to the notice of the Investigating Officer, he advised her to fix the same with mud.

11. PW4 was an eye-witness. He supported the prosecution case in its entirety. According to him, when the accused persons tried to drag his father after beating him, he, his mother and grand-mother came forward to protect him but they were pushed away. He, in his cross-examination, categorically stated that as he had started weeping, he did not know for how much time the assault continued. Her presence at the place of occurrence cannot be doubted.

12. So far as the criticism as regards his deposition by Mr. Sushil Kumar that he was a tutored witness is concerned, we may notice the relevant statement made by him before the learned trial judge:

I had told Darogaji that "Richhpal, Narpat and Rajendra had dropped my father in the well by holding him by his feet". It was told by my mother that Richhpal was not present there and on her saying I had made such statement.

We may notice that in his examination-in-chief, he stated that Narpat and Rajendra, who were present in Court, along with one person more, who came to his house to enquire about his father Ratiram. It was only in relation to the said question, namely the presence and/or active participation of Richhpal, he made the above statement. It, therefore, cannot be said that he was a tutored witness.

What might have been tutored to him by his mother was that he should not implicate Richhpal. Richhpal, we have noticed hereinbefore, was the Pradhan of the village. It is not wholly unlikely that PW1 had been put to some pressure by him as a result whereof she not only did not support her statement in the FIR that Richhpal had also participated in the commission of crime but have asked her son also to tread the same path.

13. We may also notice that PW1 in her evidence stated that she rushed towards the Police Station alone, in the following terms:

I rushed towards the Police Station alone. I do not know in how much time I reach at P.S. My report was recorded at the Police Station in the evening when the dead body of my husband was brought to the Police Station after pulling out. At this stage, the witness burst into tears, started crying out and virtually collapsed. She is not in a fit state of mind and so the statement of the witness deferred. Put up after some time.

She, thus, became emotional. Her state of mind at the time of cross-examination can very well be imagined.

14. It is now well settled that in India, the principle *falsus in uno, falsus in omnibus* has no application. Thus, only because she deviated from her statement made in the FIR in respect of Richhpal, her evidence cannot be held to be totally unreliable.

It is, therefore, not possible for us to accept the submission of Mr. Sushil Kumar that on these grounds alone, we should reject the testimonies of PW1 and PW4. It is trite that a judgment of conviction can also be recorded on the basis of the statement made before the Court by a solitary witness. Indisputably, for the said purpose, witness must be held to be trustworthy. The Court may, for the said purpose in given cases, make endeavours to find out corroboration in material particulars.

15. The medical evidence corroborates the prosecution case. The circumference of well was about three meters. Dr. Sarvesh Bihari Mathur (PW7), the autopsy surgeon, found the eyes of the deceased half open and the nails of hand and feet bluish. He further found Kuti Sansaria which is goose-skin/goose-flesh in the foot-base (Talwa). Small particles of sand were found in the wind pipe. Lungs were found to have air bubbles. There existed blood on the left hand side of the heart and the right side was found to be empty. According to him, the death took place 12 hours before the post mortem examination. The cause of death, in his opinion, was due to drowning which caused asphyxia. In his cross-examination, he stated that it might be possible that the deceased had committed suicide. But that was only a possibility. If the evidence of the eye-witnesses is to be believed and found to be reliable and we do not find any reason as to why they should not be so held, only because autopsy surgeon talked of some other possibility, as it would not lead to the conclusion that the medical evidence did not corroborate the prosecution case.

16. Apart from the statements made by PW1 and PW4 which are sufficient to bring home the charges as against the appellant herein, we may also notice that although PW3 was declared hostile, he also, to some extent, supported the prosecution case. Indisputably, the said witness had gone back from his statement made before the Investigating Officer u/s 161 of the Code of Criminal Procedure. In his deposition, however, Surajbhan stated that he had seen a

crowd and had also witnessed that Ratiram was being taken out of the well. Although according to him he had not seen Narpat, Rajendra and Richhpal dropping Ratiram into the well, in his cross-examination he stated as under:

On the place of incidence large crowd was assembled and some of them were speaking that Narpat and Rajendra had thrown Ratiram into well. I don't know the names of those persons so I cannot tell about them.

17. Thus, the fact that immediately after the death a crowd had assembled and people were talking about the death having been caused to the deceased by Narpat and Rajendra, to some extent, supported the prosecution case. Both, Munna and Surajbhan were named as witnesses in the FIR. Although they were declared hostile, a part of their statement can be taken into consideration for the purpose of finding out as to whether the appellants are guilty of commission of the said offences or not. It is a well settled law that the evidence of a hostile witness may not be totally rejected, and subject to closure scrutiny, a portion thereof which is consistent with the case of prosecution or defence, may be accepted. {see State of U.P. Vs. Ramesh Prasad Misra and another, }.

18. We have been taken through the entire materials on record and addressed at length by Mr. Sushil Kumar. We place on record that although the accused were not represented before the High Court by an advocate. Mr. Sushil Kumar very fairly took the stand that this Court should dispose of the entire appeal and need not remit the matter to the High Court for its consideration afresh.

19. For the reasons aforementioned there is no merit in the appeal. It is dismissed accordingly.

20. As Narpat, Appellant No. 2, has expired, appeal stands abated so far as he is concerned.