

(2004) 09 AHC CK 0242
In the Allahabad High Court
Case No : Criminal Appeal No. 181 of 1982

Rajendra and Another (in Jail)	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

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

Citation : (2005) 1 ACR 402

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

Bench : Division Bench

Advocate : V.M. Zaidi, for the Appellant; A.K. Dwivedi, A.G.A, for the Respondent

Judgement

M.C. Jain, J.—The two brothers, namely, Rajendra and Narpat sons of Ram Phool have preferred this appeal against the judgment and order dated 20.1.1982, passed by Sri G. K. Verma, the then Vth Additional Sessions Judge, Ghaziabad in Sessions Trial No. 183 of 1981. Both of them have been convicted u/s 302 read with Section 34, I.P.C and sentenced to life imprisonment. There was another accused Richhpal son of Bhika Singh who was acquitted.

2. The incident took place on 27.5.1981 at about 7.30 a.m. in village Khari Kuan of Town Dadari within P.S. Dadari, district Ghaziabad and the report was lodged the same day at 7.50 a.m. by Phoolwati P.W. 1 wife of the deceased Ratiram who was murdered in this incident. They allegedly committed his murder by throwing him in a well.

3. The broad essentials of the prosecution case should be set forth. The deceased Ratiram used to live in Kheri Kuan of Town Dadari. He had an elder son Govinda and a younger one named Jahangir Ram. He used to carry on the profession of goldsmith (Sunari) having a shop in village Kheri Kuan. The accused were residents of village Kheri. Some transactions of ornaments took place between Ratiram deceased and accused Narpat, Rajendra and Richhpal-Pradhan. In that connection, they used to visit the house of Ratiram in Kheri Kuan. As the

professional work of the deceased was not going on well, he and his elder son Govinda went outside in pursuit of new field of engagement. The accused Narpat and Rajendra had also ill-treated him and due to this reason also, he had to go out. In the absence of the deceased Ratiram, the accused Narpat and Rajendra visited his house, making enquiries about him from his wife Phoolwati P.W. 1. Eight days before the incident Govinda returned to his home. Phoolwati told Richhpal-Pradhan that if she was assured of the safety of her husband, she would call him back. Richhpal assured Phoolwati P.W. 1 that he would not ill-treat the deceased Ratiram. Then Govinda with accused Narpat and Rajendra went to Kanpur and it was in the morning of 27.5.1981, that Ratiram returned home. On that day at about 7.30 a.m., the three accused had also come along with Ratiram. Accused Narpat and Rajendra asked Ratiram to return their ornaments, threatening that he would be beaten up otherwise Ratiram replied that he would give their ornaments by making gradual earnings. On his such reply, the three accused started assaulting the deceased Ratiram. At that time, Phoolwati P.W. 1, Surajbhan P.W. 3, Jahangir Ram P.W. 4 (younger and minor son of Ratiram) and Smt. Sharbati-mother of the deceased were present there. They tried to come to the rescue of the deceased, but the accused Narpat and Rajendra pushed them back. In order to save himself, Ratiram caught hold of the door-frame which was up-rooted. One of the accused throttled Ratiram by neck and the other threw him in the well. A number of persons had collected there including Munna P.W. 2 and Birju. By being thrown in the well by the accused, Ratiram died. Phoolwati P.W. 1 went running to the police station and lodged the F.I.R. by oral narration. The distance of the police station was only three furlongs. A case was registered in the presence of S.I. Ramveer Singh P.W. 6 to whom the investigation was entrusted. He recorded the statement of Phoolwati P.W. 1 at the police station and went to the spot. The dead body of Ratiram was taken out from the well and the Investigating Officer prepared the inquest report as also other relevant documents. After being sealed, the dead body was sent for post-mortem through constable Brahma Pal P.W. 8 and constable Ram Prakash.

4. The post-mortem over the dead body of the deceased was conducted by Dr. Sarvesh Mathur P.W. 7 on 27.5.1981 at 6.30 p.m. The deceased was about 45 years of age and about half day had passed since he died. The eyes were half open. Cornea was hazy. No mark of external injury was seen. Liver, spleen and both kidneys were congested. Both lungs and pericardium were also congested. Air bubbles with small quantity of water were present in both the lungs. Membranes were congested. Small particles of sand were present in larynx, trachea and bronchi. In the abdomen, 100 ml. water along with sand and small particles of mud had been found. In small intestine, small quality of water, mud and gases were present. In large intestine faecal matter and gases were present. Bladder was half full. The death had taken place about half day back due to the asphyxia as a result of drowning.

5. All the three accused pleaded not guilty before the trial court. While the accused-Appellants admitted that there were transactions between his wife and

deceased Ratiram and the other accused Rajendra and Narpat denied that there was any transaction between them and the deceased. False implication was pleaded due to enmity.

6. The prosecution in all examined eight witnesses. Phoolwati P.W. 1, informant (wife of the deceased), Munna P.W. 2, Suraj P.W. 3 and Jahangir Ram P.W. 4 (minor son of the deceased) were examined as eye-witnesses, out of whom Munna and Suraj turned hostile. No evidence was adduced by the accused in defence.

7. The evidence led by the prosecution having been found convincing and satisfactory against the present two accused Appellants, they were convicted as stated above by the trial court while the third accused-Appellants Richhpal was acquitted.

8. None responded for the accused-Appellants when the appeal came on Board on 30.7.2004, though they were represented on record by Sri V. M. Zaidi, advocate. The appeal was then listed for hearing on 17.8.2004, as per the decision of the Supreme Court in the case of Bani Singh and others Vs. State of U.P., . The appeal came up for hearing next time on 24.8.2004. On that date also, none appeared for the accused-Appellants.

9. We have heard the arguments of Sri A. K. Dwivedi, learned A.G.A. and have perused the record. We propose to decide the appeal on merits dealing with the relevant aspects of the matter.

10. Taking up the question of motive first, it is there in the testimony of Phoolwati P.W. 1, wife of the deceased that some transactions between the accused and the deceased had taken place when the latter was carrying on goldsmith's profession at Kheri of which place the accused were also the residents. Due to slump in his trade and owing to some excesses indulged by the accused against him, he had gone out to earn his livelihood. It was also there in her testimony that the accused-Appellants used to come to her house to enquire about her husband. Her elder son Govinda had also gone out of the village with her husband to earn livelihood. Her son had returned to the village eight days before the incident. She had then talked to third accused-Richhpal that he was Pradhan of the village and she would call her husband if he could assure her against his ill-treatment. The third accused Richhpal had given an assurance to her that her husband would not be mal-treated and had thus encouraged her to call him back to the village. She also stated that she sent her son Govinda with the accused-Appellant Narpat to call back her husband. Her statement goes on that on the day of the incident at about 7 a.m., the accused Narpat and Rajendra as also one unknown person reached her house along with her husband Ratiram, Narpat and Rajendra demanded back their ornaments from her husband. When her husband Ratiram replied that in due course of time he would return the ornaments out of his earnings gradually, they and unknown person started assaulting him. When she and her mother-in-law tried to come to his rescue,

they pushed them aside. He was thrown by them in the well. So, there was clear motive on the part of the accused-Appellants in committing this crime that they were enraged and were nursing grudge against the deceased for having deprived them of their ornaments. The background of the transactions was related by Phoolwati P.W. 1 in the F.I.R. itself which was lodged by her by oral narration immediately after the incident without any time gap, obliterating possibility of any consultation or deliberation. The prosecution established clear motive on the part of the accused-Appellants for the commission of this crime, though the question of motive could not be very material in the present case of satisfactory eye-witness account.

11. Secondly, the F.I.R. of the case is a prompt one. The incident took place at about 7.30 a.m. and the F.I.R. was lodged by the eye-witnesses Phoolwati P.W. 1 wife of the deceased merely 20 minutes later by oral narration. The distance of the police station was about 3 furlongs and keeping this fact in view there was hardly any delay in lodging the F.I.R. The factum of the F.I.R. having been lodged by oral narration further ensures its spontaneity.

12. We may now switch over to the aspect of the ocular version of the incident. Though Phoolwati P.W. 1 and her son Jahangir Ram P.W. 4 stated nothing to show that the third accused Richhpal also took part in the murder of Ratiram, but the testimony of both these witnesses against the present accused-Appellants Rajendra and Narpat is of sterling character. The trial court has rightly observed that for certain reasons the eye-witness seemingly shielded the third accused. May be that being Pradhan, he was an influential person and the eye-witnesses were persuaded not to give evidence against him. But the absence of evidence against the third accused Richhpal does not at all affect the testimony of the two eye-witnesses Phoolwati P.W. 1 and Jahangir Ram P.W. 4 against the present two accused-Appellants. The statement of Phoolwati P.W. 1 is emphatic that on the fateful day and time, the two accused-Appellants Narpat and Rajendra and one unknown person had come to her house and demanded back their ornaments from her husband and that when latter replied that he would return the same by making gradual earnings, the accused-Appellants Narpat and Rajendra started assaulting him. She, Suraj Bhan P.W. 3, Jahangir Ram P.W. 4 and Smt. Sharbati (mother of the deceased) tried to defend Ratiram, but the accused-Appellants Rajendra and Narpat pushed them aside. She further deposed that her husband caught hold of the door-frame which was even up-rooted. It is also there in her testimony that one of them throttled the neck of Ratiram and the other caught his legs and threw him in the well. Her son Jahangir Ram P.W. 4, though a child witness of about 12 or 13 years, corroborated her testimony in material particulars. His competence to testify was tested by the trial court by preliminary examination. His statement was that on the fateful day at about 7.30 a.m., his father was brought by accused Narpat and Rajendra and one unknown person who demanded back their ornaments from him ; that his father replied that he would return the same by and by from his earning ; that Narpat and Rajendra did not agree it ; that they and the third unknown companion assaulted his

father and when his mother and grandmother wanted to defend him, they were pushed aside ; that his father caught hold of chaukhat which was up-rooted ; that his father was thrown in the well by the accused Narpat and Rajendra and one unknown person. His testimony sounds to be natural. So far as the present accused-Appellants were concerned, he remained unshaken despite searching cross-examination. The benefit could only accrue to the third accused Richhpal which had already been given by the trial court.

13. We need not labour much on the point that principle of "falsus in uno falsus in omnibus" is not applicable in our country. In each case, the Court has to appraise the evidence to see to what extent it is worthy of acceptance. It is the duty of Court to sift the evidence with care, separating the grain of acceptable truth from the chaff.

14. It is to be taken note of that the incident took place at the door of Phoolwati P.W. 1 and Jahangir Ram P.W. 4 and they are the most natural witnesses of the incident. There was hardly any reason for them to depose against the accused Narpat and Rajendra as the culprits of this crime.

15. No doubt, the other two eye-witnesses Munna P.W. 2 and Suraj Bhan P.W. 3 did not support the prosecution case, but that would not affect the credibility of Phoolwati P.W. 1 and Jahangir Ram P.W. 4. Justice cannot be defeated simply because these witnesses chose not to support the hapless widow of the deceased and his minor son. The testimony of the wife and son of the deceased as against the accused-Appellants has the ring of truth.

16. The testimony of Phoolwati P.W. 1 and Jahangir Ram P.W. 4, was also supported by medical evidence. Phoolwati P.W. 1, stated that the accused Narpat and Rajendra and unknown person had assaulted her husband with kicks and fists and her husband was pressed by one of them on his neck. The statement of Jahangir Ram P.W. 4, is also to the effect that the assailants were beating his father by kicks and fists. Dr. Sarvesh Bihari Mathur P.W. 7 who conducted autopsy on the dead body of the deceased did not find any external mark of injury on the dead body which is consistent with his beating by kicks and fists. Beating by kicks and fists was not likely to cause any external mark of injury. The evidence of the eye-witnesses that neck of the deceased was pressed in an attempt to throttle him would not mean that there should have been an injury on the neck of the deceased. He did not die of throttling. As the doctor has opined, the death took place due to asphyxia as a result of drowning. So, the absence of external injury on the person of the deceased does not run counter to the version of eye-witnesses.

17. The trial court has rightly ignored the slight difference in the evidence of the Investigating Officer Ramvir Singh, S.I. P.W. 6 and Constable Brahmapal P.W. 8 as to the time when the dead body was taken out from the well. The Investigating Officer gave out the time of taking out the dead body from the well as 10 a.m. whereas constable Brahmapal P.W. 8 (who carried the dead body for

post-mortem) stated that it was taken out from the well at about 7-8 a.m. on 27.5.1981. The incident took place on 27.5.1981 and constable Brahmapal P.W. 8 was examined in the Court on 22.12.1981. It could be due to lapse of time and consequent failure of memory that Constable Brahmapal P.W. 8 gave out the time of taking out of the dead body from the well as about 7 or 8 a.m. The F.I.R. itself having been lodged at 7.50 a.m. and the Investigating Officer having reached the spot thereafter after recording the statement of the informant at the police station itself, the truth seems to be that the dead body was taken out from the well at about 10 a.m. The inquest report was prepared at about 10 a.m. which would have immediately been after the taking out of the dead body from the well. So, the time discrepancy as to the taking out of the dead body from the well surfacing from the statements of the Investigating Officer and constable Brahmapal P.W. 8, is inconsequential and is liable to be ignored.

18. To conclude, dealing with all relevant aspects of the cases, we find no merit in this appeal. We have cross-checked the evidence on record with the reasoning and finding given by the lower court. We find ourselves in agreement with the reasoning and findings of the lower court that the case was proved to the hilt as against the accused-Appellants Narpat and Rajendra. They were acting in concert with the previous meeting of minds nursing a common grudge against the deceased. The intention to cause his death was very much there on their part. After assaulting him with kicks and fists, they threw him in the well to translate their intention into reality.

19. We, hereby dismiss this appeal. The accused-Appellants Rajendra and Narpat are on bail. The Chief Judicial Magistrate, Ghaziabad, shall cause them to be arrested and sent to jail to serve out the sentence of life imprisonment passed against each of them u/s 302 read with Section 34, I.P.C.

20. The Chief Judicial Magistrate, Ghaziabad, shall send the compliance report within two months from the date of receipt of copy of this order.