
(1988) 02 AHC CK 0052

In the Allahabad High Court

Case No : Criminal Appeal Nos. 1642 and 1643 of 1978

Rajendra, Mudlak alias Vijendra Singh and Anr.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-02-1988

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1988) 02 AHC CK 0052

Hon'ble Judges : S.I. Jafri, J and G.K. Mathur, J

Final Decision : Allowed

Judgement

S. I. Jafri, J.—Rajendra has filed Criminal Appeal No. 1642 of 1978 while Mudlak alias Vijendra Singh and Harish have filed Criminal Appeal No. 1643 of 1978 against their conviction and sentences recorded by Sri I. P. Singh Sessions Judge, Ghaziabad by his judgment and order dated 29.5.1978. The appellants were convicted under Section 302 read with Section 34 I. P. C, and were sentenced to undergo R. I. for life imprisonment. Both the aforesaid appeals were connected and we are disposing of both the appeals together by a common judgment and order.

2. Rajendra Singh and Mudlak appellants are real brothers, while appellant Harish is their nephew.

3. The case of the prosecution in brief is that on the day of occurrence, Mahendra Singh deceased had gone to the shop of Mool Chand to take delivery of his shirt which he had given him for tailoring and at about 6.30 p.m. on 22.8.1977, while the deceased was sitting on a cot in front of shop of the Mool Chand, the appellants arrived there from the western side and landed knife blows on the person of the deceased, with the result, the deceased sustained grievous injuries on his person. The occurrence was witnessed by Mool Chand, Nepal Singh P. W. 2, Brahma putt P. W. 4 and few others. The appellants after inflicting injuries on the injured, escaped from the scene of occurrence. After the occurrence,

Mahindra Singh deceased was first taken to his Gher and thereafter, he was removed to M. M. G. Hospital. Ghaziabad where the Doctors declared him dead. A memo regarding the death of deceased Mahindra Singh was sent to Police Station Kotwali by Dr. S. K. Gupta (D. W. 1) to the effect that the dead body of the deceased was brought to the Hospital by Hari Kishan son of Ganga Sahai.

4. Brahma Dutta P. W. 3 left for Police Station Kavi Nagar at 6.30 p.m. from Hospital M. M. G. Ghaziabad and at 11 p.m. he handed over his written report to Kewal Singh (P. W. 7) Head Constable of the aforesaid Police Station. The aforesaid report had been prepared by the Informant at the hospital itself. The Head Constable prepared a chik report on the basis of the aforesaid written report and registered a case in the General Daily of the Police Station against the appellants under Section 304, I. P. C. After registration of the case, Ram Vir Singh SubInspector was sent to the place of occurrence as the Station Officer was not available at the Police Station. Later on the Station Officer Suresh Chand Sharma P. W. 9 returned to Police Station at 12.10 on 2381977 and it was, then, that he took up the investigation of the case and started for the place of occurrence at 12.15 a.m. and reached there at 1 a.m. The Investigating Officer P. W. 9 recorded the statements of complainant Brahmnn Dutt and Mool Chand and thereafter investigation of the case was deferred till next morning. The Investigation Officer again arrived at the place of occurrence next morning at 5.30 a.m. and inspected the site of occurrence and prepared siteplan Ex. Ka 14. He also collected bloodstained and unstained earth from the place of occurrence and got the requisite memo prepared on his dictation by SubInspector Ranvir Singh. He also found a cot bloodstained at the place of occurrence, and he took into possession the blood stained strings (Badh) of the cot prepared a recovering memo Ex. Ka13. After investigation the SubInspector returned to Police Station on 2381977 at about 4.35 p.m. and he got the case converted into one Section 302 I. P. C. The Investigation Officer again went to village Shahpur Bumheta on 25th August 1977 where he interrogated some residents of the village and arrested Mudlak, Rajendra and Harish. After concluding the investigation, the SubInspector submitted chargesheet Ex. Ka 5 against the appellants in the court.

5. The autopsy on the dead body of the deceased Mahinder Singh was carried by Dr. O. N. Srivastava on 2381977 at 3 p.m. in the District Hospital Ghaziabad and he found the following antemortem injuries on his person.

1. Punctured wound with clear cut margins 4 cm x 1.5 cm x chest cavity deep on the back of chest right side, medial to the middle of the right scapula, transversely placed.

2. Incised wound 3 cm x 1 cm x bone deep on the back of chest right side on the middle of the right scapular bone.

3. Linear abrasion over the groin region (paper torn) side close to attachment of (paper torn) 2 cm in length.

6. The appellants pleaded not guilty to the charge and attributed their false

implication in the case to enmity. They examined Dr. S. K. Gupta, D.W. 1 in their defence.

7. The prosecution examined nine witnesses in all in support of its case and out of them, Mool Chand P.W. 1, Nepal Singh P.W. 2 and Brahma Dutt P.W. 4 were examined as witnesses of the occurrence.

8. Brahma Dutta P.W. 4 is the first Informant in this case. Admittedly, he is a cousin of the deceased Mahinder Singh. Dwelling upon the prosecution case, he deposed that on the day of occurrence at about 6.30 p.m. while he was on his way back to his house from his field and had arrived near the shop of Mool Chand, he found his cousin Mahinder Singh deceased seated on a cot in front of the shop of Mool Chand. All of a sudden, the appellants who were armed with knife, emerged from the western lane and fell upon the deceased. Appellants Harish and Mudlak had inflicted knife blows upon the deceased while Rajendra appellant had kept the deceased encircled and was on the look out for assault. At the time of occurrence, Mool Chand who runs a grocery cum tailoring shop, was present at his shop and Nepal and Hari Kishan were also present there. After the occurrence, the appellants escaped through the western lane. He tied the wounds of the deceased by means of his thumb and brought the deceased to his ghar on a cot and thereafter the deceased was removed to hospital where the Doctor declared him dead. He, thereafter, wrote down the report of the occurrence in the hospital itself and on reaching the Police Station, he gave his report to the Head Constable. According to him, he had reached the hospital at about 10 p.m. While explaining the delay, he deposed that the deceased was first taken to his and thereafter a search was made for tractor and when one Mahesh brought his tractor it had no trolley. Then efforts were made to get trolley and when trolley was not available, the deceased was removed to hospital on a Buggi. He further deposed that on reaching the G. T. Road the gate of the railway crossing was also found closed. Regarding motive, he deposed that a day prior to the occurrence, some music concert was being performed in the Girls School in the village and a quarrel erupted in which the deceased had given beating to the appellants.

9. The learned counsel for the appellants has contended that the presence of Brahma Dutt PW 4 at the scene of occurrence at the time of assault on deceased Mahindra Singh is highly doubtful inasmuch as the deceased Mahindra Singh had admittedly been brought to M. M G. Hospital Ghaziabad by Hari Kishan as is borne out from the evidence of Dr. S. K. Gupta D. W. 1. Hari Kishan resides at Shahpur Hemlet situate at distance of 11/2 miles from the shop of Mool Chand and according to the evidence on record, Hari Kishan was unconnected with deceased Mahinder Singh. The learned counsel has pointed out that Brahma Dutta accompanied the deceased Mahinder Singh to M. M. G. Hospital, his name must have been mentioned by the Doctor as the person who had brought the deceased to the hospital. This submission of the learned counsel carries conviction with me. The learned counsel has further drawn our attention to

another discrepancy in the First Information Report to the effect that Brahma Dutta PW4 had specifically mentioned in the First Information Report that all the three appellants had inflicted knife injuries on the person of the deceased. To the like effect, he stated before the Investigating Officer, but curiously enough while in court, he departed from his earlier statement before the Investigating Officer and deposed that only Mudlak and Harish had given knife blows to the deceased. It was suggested by the learned counsel that the improvement to this effect was deliberate and calculated as a measure to bring his evidence in consistency with the injuries found in the post mortem Report. It is worthy of mention that in the post mortem Report, the doctor had found one punctured wound and one incised wound. When the witness Brahma Dutt was confronted with the First Information Report, he stated that by mentioning in his report that all the three accused had given knife blows to the deceased, he strictly meant that only Mudlak and Harish appellants had assaulted the deceased and the third appellant had remained aloof. When his attention was again drawn by the learned counsel to his statement before the Investigating Officer, he denied to have made any such statement. We have given our anxious considerations to this aspect of the matter and we feel that the some assault that he had taken as stated supra is a calculated one in order to bring his evidence in conformity with the medical evidence and this defect in his evidence has aroused a lot of suspicion about his presence at the time when the deceased was assaulted.

10. It was submitted by the learned counsel for the appellant that Police Station Kavi Nagar is situated at a distance of about 4 Kms. from the place of occurrence and the G.T. Road runs at a distance of 1J furlongs from the said village to Ghaziabad and therefore, it is pointed out that there is undue delay in lodging the First Information Report at 11p.m. at Police Station Kavi Nagar. This circumstances clearly goes to show that the First Information Report was lodged with undue delay of five years after the occurrence at the Police Station which also goes a long way to undercut the credibility of the First Information Report as the first information report has its own significance supposed to be having first hand version of the incident. The delay of five hours has stsenghtened the probability of embellishment in the First Information Report. The learned counsel has further drawn our attention to the Chik Report Ex. Ka 8 which appears to have been prepared on 2381977 and not at 11 p.m. on 2281977. We have very carefully examined the document and we are fully satisfied that Kewal Singh PW 7, Head constable who had prepared the Chik Report had signed the printed page of Chik Report on 2381977. Under the circumstances, even the lodging of the First Information Report at 11 p.m. on 2281977 is shrouded in great doubts and the possibility that the First Information Report was prepared next day of the occurrence i. e. on 2381/77 cannot be ruled out. Even Suresh Chand Sharma PW 9, the Investigating Officer of this case has admitted in his evidence that the Chik Report of this case was prepared by the Head Constable Keval Singh on 2381977. He has further admitted that Chik Report was shown to him by the Head Constable Ex. Ka 8 on 2481977.

11. Brahma Dutta, First Informant of this case is a chance witness and besides being a chance witness, considering the infirmities with which his evidence abounds as indicated above, his evidence is not worthy of being relied upon.

12. Mool Chand PW 1 has corroborated the statement of Brahma Dutt PW 4. He has also rehearsed the same version that only Mudlak and Harish inflicted knife blows on the persons of the deceased, in order to bring his evidence in conformity with the medical evidence. Besides, his evidence that the deceased had come to his shop in order to take his shirt which he had given for tailoring, smacks of lie inasmuch as he admitted that he did not mention this fact to the Investigating Officer and under the circumstances his evidence also does not radiate confidence, it being obviously overlaid with lies.

13. Nepal Singh PW 2 has also lent full corroboration to the evidence of Brahma Dutta PW 4 but his evidence also is tarred with the same brush as that of Brahma Dutta PW 4. He is no doubt a natural witness being the neighbour of Mool Chand but in view of his evidence abounding with glaring infirmities, it makes difficult for us to place implicit reliance on his testimony.

14. The learned counsel for the appellants has also pointed out the circumstances that the bloodstained cot was left in the lane after the occurrence though according to the prosecution case after the occurrence, the deceased was taken to his Gher. This appears to be a conduct not consistent with the timetested natural conduct as the bloodstained cot was an important piece of evidence and should not have been abandoned in the lane as deposed by the witnesses. This circumstance even renders the place of occurrence as doubtful. Moreover, the prosecution has not proved Serologist report in this case which could have fortified the case of prosecution. Besides, the Investigating Officer also did not take the said cot into his custody nor was it given in the supradagi of the witnesses.

15. The learned counsel for the appellants further submitted that in this case, the investigation was so recklessly conducted as to give an impression of its being not aboveboard which impliedly meant that there has not at all been fair and dispassionate investigation in this case. We have given our anxious consideration to this aspect of the matter and we are also of considered view that the investigation in this case was not only unfair and tainted but was so garbled as to visit upon the prosecution case with its detrimental consequences. The circumstance that the site plan which was first document prepared by the Investigating Officer on the spot bears Section 302 I.P.C. though at the time of preparation of siteplan the case registered under Section 304 I.P.C. had not been converted to Section 302 I.P.C., tells a different story, Kewal Singh, Head Constable stated that the case under Section 304 I.P.C. was converted to one Section 302 I.P.C. on return of Sub Inspector Suresh Chand Sharma PW 9 at 5.45 p.m. on 2381977 at the Police Station from the place of occurrence. Under the circumstance, the probability that the siteplan was prepared after conversion of the case from 304 I.P.C. to Section 302 I.P.C. after 5.45 p.m. on 2381977

after the return of the Sub Inspector from the place of the occurrence to the Police Station further renders the investigation highly suspect.

16. Upon a conspectus of the facts and circumstances, we harbour reasonable doubt whether various recovery memos such as that of bloodstained earth, bloodstained strings of the cot etc. were prepared at the time alleged by the Investigation Officer. A fair and dispassionate investigation always imparts vigour to the prosecution case enabling the prosecution to stand upon its own legs and not on the weaknesses of the defence and once it is held as being unfair, unjust and reckless, it is bound to cast its shadows upon the veracity of the prosecution case with all its evil consequences. The learned counsel for the appellants has also drawn our attention to the fact that the first Parcha of the case diary reached the Circle Officer on 2881977. This conduct of the la vest gating Officer is also deplorable.

17. Under the circumstances, there is respondent evidence on record to hold that in this case, fair and dispassionate investigation is obviously wanting exposing the investigation to criticism as being not above board.

18. Before parting with the case, at the risk of repetition, we may recapitulate that in the present case, the prosecution witnesses have demonstrated themselves to be borne to lies on important points and as such we do not find their evidence such as may be safely relied upon or may inspire that amount of confidence which may lead us to the only categorical conclusion that the crime had been committed by the appellants. We also gather from the facts and circumstances that the First Information Report does not disclose quite a true picture of the incident. It is really unfortunate that the murder of this nature goes undetected and unpunished, the larger responsibility for which has to be apportioned to the Investigating Agency, as the investigation in this case suffered from inexcusable laxity. Besides, the delay of five hours in lodging the First Information Report is in itself an evidence of deliberation and withholding of complete truth and rather prevarication of the witnesses of coming out with the whole truth.

19. In view of the facts and circumstances of the case and discussed above, the order of conviction and sentences recorded by the trial court is unsustainable.

20. In the result, both the appeals are allowed. The conviction and sentences recorded against the appellants in both the appeals by the trial court are set aside. The appellants are on bail. They need not surrender and their bail bonds are discharged.

Appeals allowed.