
(1985) 03 AHC CK 0073

In the Allahabad High Court

Case No : Criminal A. No"s. 2068 and 2069 of 1977

Rajjo Singh and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-03-1985

Acts Referred:

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

Citation : (1985) ACR 308

Hon'ble Judges : R.P. Shukla, J;I.P. Singh, J

Bench : Division Bench

Advocate : G.P. Dixit, for the Appellant;

Final Decision : Allowed

Judgement

I.P. Singh, J.—Criminal Appeal No. 2068 of 1977 has been filed by Chander Pal Singh while Criminal Appeal No. 2069 of 1977 has been filed by Rajjo Singh and Sumer against the judgment and order of Sri K.P. Sinha, Addl. Sessions Judge, Fatehpur dated 13-9-76 convicting and sentencing each one, namely, Chander Pal Singh, Appellant u/s 302 IPC and Rajjoo Singh and Sumer, Appellants u/s 302/34 IPC to life imprisonment.

2. The prosecution case is that Smt. Bhondli, the deceased, the aunt of Shyam Lal, complainant, PW 1, was kept as his wife by one Narpatt Singh, resident of Sato Joga for about 23 years before his death. However he had gone to live with Smt. Bhondli in her house in village Mungri Bagh, a hamlet of village Sato Joga within police station Asothar. Narpatt Singh happened to execute a registered deed dedicating his 8 bighas of land to the temple of Mahadeo Ji situate in village Sato Joga. However, he stipulated in the deed that during his life-time he would be in possession of the said land and after his death Smt. Bhondli, deceased, would be in possession and it would be only after her death that the land would revert to his sons, namely, Rajjo and Kunwar etc. from his first wife Smt. Sonia.

3. It so happened that Narpatt Singh died about a few months prior to the

present occurrence. Smt. Bhondli got into possession over the said land. Rajjo Singh, Appellant, was wanting her to stay with him in village Sato Joga but she did not oblige him. According to the prosecution, this circumstance afforded motive on the part of Rajjo Singh to do away with Smt. Bhondli and thus to accelerate the succession to the said land, according to the above-mentioned deed executed by Narpat Singh.

4. It was further alleged that about 5 or 6 days before the present occurrence Smt. Bhondli had to move an application before the Collector, Fatehpur regarding the said land fearing interference from Rajjo Singh.

5. On 29-7-1976 Smt. Bhondli, deceased, accompanied by Shyam Lal, PW 1, is said to have gone to Fatehpar to take advice from an advocate in the matter of taxes on the temple. They got free from Fatehpur by 3 p.m. and returned by bus and Tonga to village Sato Joga. From there the village Mungri Bagh was about a mile. They proceeded on foot. At about 4.30 p.m. they reached the play-ground of Gram Samaj near the mango grove. It was then that Rajjo Singh and Sumer, Appellants, armed with lathis and Chander Pal Singh carrying a Kulhari emerged from the side of the mango grove and way laid Smt. Bhondli. At the instigation of Rajjo Singh, Appellant, the other Appellant Sumer Singh threw Smt. Bhondli on to the ground. Rajjo Singh and Sumer Singh, Appellants, caught hold of her while Chander Pal Singh, Appellant, dealt Kulhari blows on her body including the front of her neck. On the alarm raised by Shyam Lal, complainant, PW 1, Sheo Bhukan, PW 2 and Sri Pal rushed to the spot. The Appellants ran away. Smt. Bhondli breathed her last on the spot.

6. First Information Report of this occurrence was lodged by Shyam Lal, complainant, PW 1, at the police station Asothara, 6 miles away, at 8.30 p.m. the same day.

7. The defence was that the Appellants were falsely implicated in this case due to enmity.

8. The prosecution examined in all 7 witnesses including Shyam Lal, PW 1 and Sheo Bhukan, PW 2 the eye-witnesses. The post mortem examination of the deceased was conducted by Dr. Abdul Waheed PW 3 on 31-7-1976 at 11 a.m. According to him the probable time since death was about 2 days. The deceased had suffered four ante-mortem incised wounds, one on the front of neck, the other on the middle of forehead, the third on the back of occiput on the left side and the fourth on left cheek along the lower border. Besides, she also suffered two ante-mortem abraded contusions, one on the right temple 2 1/2" x 1" and the other on the middle of left middle arm 1" x 1". These injuries according to the doctor's opinion could go back to the alleged hours of occurrence. The cause of death was shock and haemorrhage due to the above described injuries.

9. The defence had examined one witness Beni Madho Singh, DW 1, who was a formal witness not directly concerned with the present occurrence.

10. The learned Addl. Sessions Judge after assessing the evidence of the case convicted and sentenced each one of the Appellants as already mentioned above.

11. Shyam Lal, PW 1, has claimed that he was accompanying the deceased lady at the time of occurrence. Sheo Bhukan, PW 2, had rushed to the spot being attracted by the alarm raised at the time of occurrence. Shyam Lal claimed that he was only 4 or 5 paces behind the lady while Sheo Bhukan, PW 2, claimed to have witnessed the occurrence from a distance of 20-25 paces. According to the prosecution, it was a broad day-light occurrence and the Appellants were fully known to these witnesses. The argument is that there could not be any question of mistaken identity and both the witnesses were in a position to have a clear view of the occurrence. It is further argued that ocular evidence finds corroboration from the medical evidence so far as the use of Kulhari by Chander Pal Singh is concerned. Of course, it is contended that the prosecution does not allege the use of lathi by the other two Appellants but then they had caught hold of the deceased lady after Sumer had lifted her and thrown her on the ground. One abraded contusion has been explained as being the result of the said fall which, it is contended, was on the right temple resulting in the injury at that part of the body of the deceased, The other abraded contusion on the middle of left upper arm is argued to have been caused by the flutter which the lady must have made in the course of brutal attack on her. It is therefore argued by the prosecution that the conviction and sentence as awarded by the learned Sessions Judge ought to be confirmed.

12. Both the eye-witnesses, namely, Shyam Lal and Shiv Bhukan have stated that within their view first Sumer Singh, Appellant, threw the deceased lady on to the ground and then Rajjo Singh, Appellant, caught hold of hands of the lady while Sumer Singh, Appellant, caught hold of her legs, In this way, both these two Appellants caught and pressed her to the ground facilitating Kulhari attack by Chander Pal Singh, Appellant, on the deceased. According to Shyam Lal, PW 1, 4 or 5 blows of Kulhari were given by Chander Pal Singh, Appellant. This number of blows was stated in the examination in-chief. However, in his cross-examination, he maintained that three blows of Kulhari were dealt which fell on the neck of the deceased lady. Similarly, Shiv Bhukan, PW 2, has also stated that 4 or 5 blows were dealt by Chander Pal Singh on neck of the deceased.

13. The above eye-witness account, in our opinion, does not fit in with the injuries sustained by the deceased. Their version might be capable of explaining one abraded contusion but fails to account for the other abraded contusion. Above all, the above version does not lend support to the incised wounds sustained by the deceased on the other parts of her body. At any rate, it fails to account for the incised wound 2 1/2" x 1/2" x scalp deep on the back of occiput on the left side. An argument was advanced by the learned D.G.A. that when the deceased was being given Kulhari blows it is quite natural that she might have made several efforts to get herself released and in that process would have afforded an opportunity to Chander Pal Singh, Appellant, to give her Kulhari blow

on the back of occipit on the left side. But this attempted explanation on his part does not satisfy us. Under the circumstances, we have no hesitation to say that the eye-witness account given by the two prosecution witnesses remains in conflict with the injuries sustained by the deceased. The only conclusion which can be drawn is that the incident did not take place in the manner as deposed by the said two eye-witnesses. If this is the situation, then we have no hesitation to say that these two witnesses were not present on the spot to witness the occurrence. Strong doubt remains in our mind regarding the role of all the three Appellants in the occurrence. The benefit of this doubt must go to them and they should be acquitted of the charges against them.

14. The two appeals in the result, succeed and are allowed. The conviction and sentence awarded to each of the Appellants are hereby set aside. They are acquitted of the charges against them. They are on bail. They need not surrender their bail bonds which are cancelled and their sureties are discharged.

Appeals allowed.