
(2012) 10 AHC CK 0028
In the Allahabad High Court
Case No : Criminal Appeal No. 5705 of 2004

Rajveer Trimal Yadav

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2013) 2 ALJ 222

Hon'ble Judges : Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench : Division Bench

Advocate : Anil Srivastava, R.K. Vaish, Apul Misra, Preetpal Singh Rathore and Vinod Singh, A.C, for the Appellant; Syed Ali Murtaza, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar Sharma, J.—The sole appellant has challenged his conviction and sentence passed by the Additional Sessions Judge, (Court No. 2), Budaun in ST No. 49 of 1997 (State v. Rajveer), Case Crime No. 278 of 1996, u/s 302/34 IPC, Police Station Bisauli, district Budaun, whereby the appellant has been found guilty under the aforesaid section and has been sentenced for imprisonment for life and fine of Rs. 10,000/-with default stipulation. The facts germane to the appeal are that on 30.8.1989 at about 7.05 p.m. Shyam Lal son of Sri Chunni Singh Yadav, resident of village Prathipur, Police Station Bisauli, district Budaun submitted a written report at Police Station Bisauli stating that he and his cousin Tirmal resides in the same house in village Prathipur. His wife deserted him about 27 years ago. At that time she was having son Ram Avtar, daughter Munni and a child in womb whose name is Rajveer. They used to visit Tirmal and for two months Ram Avtar and Rajveer, were residing with their father. They used to insist him for getting a house constructed in Bisauli and on this issue there was tension between them. In the preceding night at about 12 o'clock Tirmal cried for help whereupon he, his wife Ram Bed, daughter of Preeta and son Om Veer woke up and climbing up stairs on the roof found that Ram Avtar and Rajveer

were assaulting Tirmal with knives, who was crying and fell upon the cot. The accused also threatened them but on their alarm village people also arrived there and the accused persons made their escape good. In the written report it is further stated that the complainant and his family members has seen the incident and the accused in the light of lantern, who were in the courtyard and on the roof. Tirmal instantaneously died on the spot and a blood stained knife was lying there. On the basis of this report a case u/s 302/34, IPC was registered at Crime No. 278 of 1996 at P.S. Bisauli, district Budaun and the investigation whereof was taken over by SHO Karan Veer Singh Vansala. After interrogating the complainant he reached at the spot, prepared site-plan, collected samples of plain and blood stained earth. He also found a blood stained knife, pair of blood stained chappals and pieces of blood stained rope (baan) from the cot on which the deceased fell down after sustaining injuries and prepared separate memos. He also inspected the two lanterns in working condition, which were lighting in the courtyard and on the roof and gave in the supurdagi of the complainant after preparing memo Ext. Ka-2. The inquest over the cadaver of the deceased was performed and along with usual papers the dead body was sent in sealed cover for post-mortem at 10.30 a.m. on 30.8.1996. The same day Dr. R.C. Dimri conducted autopsy on the corpse of 60-years" old deceased at 4.00 p.m. He found that the deceased was having average build body. Rigor mortis was passing of from both upper limbs and was present in both limbs. The doctor has noted the following ante-mortem injuries in his post-mortem note:

- (i) Incised wound 3 cm. x 0.2 cm. x skin deep on the back of right elbow
- (ii) Incised wound 2 cm. x 0.5 cm. x skin deep on outer aspect of middle of right forearm.
- (iii) Stab wound 5 cm. x 3 cm. x cavity deep on left flaule loop of intestine out of cavity.
- (iv) Stab wound 3 cm. x 1 cm. x cavity deep on left side abdomen 10 cm. from umbilicus at 2 o'clock position. Omentum out.
- (v) Four stab wounds varying from 5 cm. x 4 cm. to 3 cm. x 7 cm. x cavity deep on right side abdomen in an area 11 cm. x 9 cm. intestines out of wound.
- (vi) Three incised wounds 2 cm. x 0.5 cm. x skin deep on right side abdomen near flaule.
- (vii) Six stab wounds 2 cm. x 1 cm. to 1.5 cm. x 0.5 cm. x variable depth on front of neck in an area of 8 cm. x 6 cm. Trachea and major blood vessels cut underneath.

On internal examination the doctor found that the heart of the deceased was empty, the cavity was full of dark fluid blood, and stomach was empty. Large intestine were full of faecal matter. The gall bladder and pancreas were cut under injury Nos. 4 and 6 respectively. The blood was oozing. In the opinion of doctor, the deceased suffered death about 3-4 days before due to shock and

haemorrhage as a result of ante-mortem injuries.

2. The Investigating Officer thereafter interrogated the witness and after completing the same has filed charge-sheet against the appellant and his brother Ram Avtar.

3. After committal of the case charge for the offence punishable u/s 302/34 IPC was framed against both the accused. However, accused Raj veer absconded during trial so his case was separated.

4. In support of the charge the prosecution has examined the complainant Shyam Lal, PW-1, Omvir, PW-2, Anokhe Lal PW-3, Dr. R.C. Dimri PW-4, Constable Ibrahim Khan PW-5, Sub Inspector Ajai Kumar Tyagi PW-6 and the retired Inspector Karam Veer Singh Vansala, PW-7.

5. In his statement u/s 313, Cr.P.C. accused Rajveer has admitted that he and his brother Ram Avtar are the sons of deceased Tirmal Yadav and the complainant Shyam Lal was cousin of the deceased. He further admitted that about 27 years ago his mother Nathia has left the house, but he and his brother and sisters used to visit the deceased. He has denied other part of the prosecution story. He has pleaded false implication. The accused did not adduce the evidence in defence.

6. The trial Court after hearing the parties counsel has convicted and sentenced the appellant as indicated in para-1 of the judgment. Aggrieved, the appellant has come up in appeal.

7. In this appeal Sarva Sri Anil Srivastava, Preet Pal Rathore and R.K. Vaish had filed their memo of appearance on behalf of the appellant. The appeal was listed for hearing since 8.9.2009. On 13.1.2010, when the appeal was listed for hearing in Court No. 55 none of the aforesaid counsel appeared in the Court, even in the revised list. On 12.10.2012, the case was taken in the revised list. The Court waited and notified the counsel for the appellant, but no one appeared, therefore, Sri Vinod Singh, Advocate was appointed as amicus curiae to argue the appeal on behalf of the appellant and the paper book was supplied to him.

8. We have heard Sri Vinod Singh, Amicus Curiae for the appellant and Sri Syed Ali Murtaza, learned AGA for the State.

9. Learned counsel for the appellant has argued that there was no motive for the accused to eliminate their father; that no independent witness has been examined; that only interested witnesses have been produced by the prosecution and the prosecution case is highly improbable. Refuting these arguments, the learned AGA has submitted that the incident had taken place in the mid night inside the house and the occupants of the house were the only eye witnesses. The other people of the village arrived at the scene of the occurrence after the incident; that PW-1 Shyam Lal and PW-2 Omvir have no animus against the appellant; that there was sufficient light in which the complainant and his family members recognized the accused persons; that it was not a case of "hit and run", rather the accused persons have mercilessly butchered their father by

inflicting as many as five incised wounds and 12-stab wounds and that the eye witness account of the incident finds full support from the medical evidence.

10. Complainant Shyam Lal PW-1 has stated in his deposition that he and the deceased had common grand father and they both reside in the same house. The first wife of the deceased named Nathia had left him about 27 years ago. She had three children from Tirmal i.e. the accused-appellant, his brother Ram Avtar (who has absconded) and their one sister. The deceased married about 15 years ago with Sm. Bhagwan Devi and she had three daughters and two sons from the deceased. It has also come in the evidence that Tirmal never visited his first wife after she left him. In these circumstances, it was quite natural for the appellant and his brother to suspect that the deceased would not give any share to them from his property. Although, PW 1 has admitted in his cross-examination that the accused did not tell his father to give them house in Bisauli in his presence, but he had heard about it. PW-2 Omvir has supported his father on the point of motive. In cross-examination he has stated that though the accused and his brother had not told their father (the deceased) to get them a house in Bisauli in his presence, but the deceased had told him about this fact. The apprehension of the accused and his brother about not getting any share in the property of his father was quite natural because the deceased had contacted second marriage with Bhagwan Devi and had five children from her. Our conclusion also finds support from the fact that after the murder of the deceased, his immovable property has been mutated in the name of Smt. Bhagwan Devi. The birth of the accused-appellant did not take place in the house of the deceased, because when his mother left the deceased he was in womb. Both the accused have been brought up by their mother Nathia, so they have no emotional attachment with the deceased, but there was eye on his property. It has also come in evidence of PW-1 and PW-2 that the accused persons were residing with the deceased for two months and prior to that they have visited only 3 or 4 times. This conduct of the accused persons show that they had come to live with the deceased with the sole aim to have a house from their father in Bisauli and on his refusal they got rid of him. Thus, we find that the prosecution has alleged adequate and sufficient motive for the accused persons, who have not been brought up in the company of their natural father to eliminate him.

11. The alleged incident took place in the mid-night of 29.8.1996 and its FIR had been lodged by the complainant at 7.05 a.m. on 30.8.1996. The distance between the place of occurrence and the police station is 5 Kms. as per check report Ext. Ka-8. Although, the learned counsel for the appellant has raised question about the authenticity of the report on the ground that it has been lodged with inordinate delay, but on scrutiny of the statement of the complainant, we find that he has not been cross-examined on this point at all. It has come in the evidence of PW-1 that on the faithful day Smt. Bhagwan Devi had gone to her parents' village along with her children on the eve of Raksha Bandhan. From the calendar of the year 1996, we find that Raksha Bandhan was solemnized on 28.8.1996. Thus, in the family of the deceased there was none

except the complainant to inform the police. It may be possible that on account of fear of the accused-appellant and his brother, the complainant could not muster courage to lodge the report during the night. No suggestion whatsoever had been given to the complainant for falsely nominating the appellant and his brother in the written report. He has specifically stated in the examination-in-chief that he had no enmity with the accused persons. A vague suggestion has been given to the complainant in the end of his cross-examination that he was having illicit relations with the wife of the deceased Smt. Bhagwan Devi and in fact he had killed the deceased. Thus, in the facts and circumstances of the case, we find that there is no inordinate delay in lodging the FIR.

12. Learned counsel for the appellant has argued that in the written report the complainant has stated that on their commotion several villagers arrived there and then the accused persons made their escape good. His contention is that the prosecution has not examined any independent witness in support of his case. As we have noted earlier, that the incident had taken place in the mid night inside the house of the deceased and the place of incident is the roof of the house. Therefore, except the inmates of the house no other person could have seen real assault of the deceased.

13. PW-1 has stated in his cross-examination that immediately after the incident about 50 persons came in the house. In the next breath he has stated that on commotion the accused persons ran away. Similarly, PW2 Omvir has stated in his cross-examination that he reached at the spot soon after hearing the noise. Thus, from the statement of both the witnesses it appears that the other villagers arrived at the scene of occurrence after the accused persons have made their escape good. It has come in the statement of PW-1 that he and Tirmal deceased had common mother, but their fathers were different. No plausible explanation has been given on behalf of the appellant as to why the complainant would falsely nominate the accused persons, although, it was suggested to PW-1 that he had illicit relations with Smt. Bhagwan Devi and he was in possession of the property of the deceased, so he had killed him but there is no other material to support this case.

14. In the written report itself, the complainant has stated that he saw the incident in the light of the two lanterns, one was lighting in the Court-yard and the other on the roof of the house. The Investigating Officer has prepared memo regarding two working lanterns of the complainant and this recovery has also been testified by Anokhey Lal, PW-3. We have already seen, that the lantern was also produced in the Court. As noted earlier, it was Raksha Bandhan on 28.8.1996 and the incident had taken place in the night of 29.8.1996. Raksha Bandhan is celebrated on PURNIMA in the month - BHADRAPADA of SAKA Calendar. Since the accused persons were residing with the deceased for two months, so the complainant and his son very well knew them. In the second night after PURNIMA there remains sufficient moon light. Moreover, the eyes of the village people are not like urban people who are acclimatised with fluorescent

light. The vision potency of villager is attuned to country made earthen lamps and lanterns. The visibility of villagers is conditioned to such lights, hence there appears to be no question of mis-identity of the accused persons, who had remained for quite sometime at the place of incident because they have inflicted as many as 17 knife injuries on their father.

15. Both the witnesses of fact have stated in their deposition before the Court that when they reached on the roof of the house, they found both the accused persons assaulting their fathers with knives, they threatened them and thereafter left the place of occurrence. The complainant could not tell in his cross-examination as to from where the accused climbed over the roof. However, his son PW-2 Omvir has stated that there is no other door of their house which they closed during the night. The stairs inside the house is about 20 yards from the main door. It has also come in the statements PW-1 and PW-2 that both the accused were found roaming outside the house, so it was possible that when they went out the door was not locked from inside and they used the door for their ingress. Moreover, while, two families reside in a house having common door for their and egress and ingress then no one can know when the other has opened the door during night. PW-2 has stated in cross-examination that both the accused did not sleep in the night and they were roaming hither and thither. In such a situation, when the accused persons, who were residing with the deceased for two months have not returned back in the house, so there was no question of locking the main door of the house during night. The complainant or any of his family member can never perceive that the accused would eliminate their father during night. Thus, we find that the testimony of PW-1 and PW-2 with regard to real incident of assault on the deceased is quite clear, cogent and reliable. There are no material contradictions or inconsistency in their testimony.

16. Learned AGA has argued that ocular account of the incident finds full support from medical evidence. We have been taken through the autopsy notes of Dr. R.C. Dimri, PW- 4 and his testimony recorded before the trial Court. Dr. Dimri has stated in his cross-examination that all the injuries found on the person of the deceased could have been suffered by him in the night of 29/30.8.1996 at about 12 O'clock and they were sufficient to cause his death. Perusal of the ante-mortem injuries found by the doctor on the person of the deceased show that most of them are on his neck and abdominal area. The doctor has stated in his cross-examination that we could not tell whether the injuries were caused by single knife or not. He has specifically denied that the injuries could not be caused by small sickle. In these circumstances, we find that the testimony of PW-1 and PW-2 finds full corroboration from medical evidence and there is no inconsistency between the two.

17. The Investigating Officer has collected samples of plain and blood stained earth and has also taken in possession the pieces of blood stained rope from the cot on which the cadaver of the deceased was lying, as also two pairs of chappals and a blood stained knife from the spot. He also inspected the lanterns which

were lighting in the house of the complainant, one in the Courtyard and the other at the roof on the fateful night. These recovery memos are Exts. Ka-2 to Ka-6, which have also been proved by independent witness Anokhey Lal PW-3, who was Pradhan of the village. The recovery of the aforesaid articles fixes the place of occurrence. PW-1 has stated in his cross-examination that he was interrogated by the Investigating Officer on the roof of the house and he also performed the postmortem on the roof. This statement of PW-1 shows that he does not know the meaning of post-mortem. Perhaps he is confused with the inquest which is usually known as Panchayat-nama, which was conducted by the Investigating Officer on the roof.

18. In view of the afore-stated reasons, we find that the prosecution has proved its case beyond all reasonable doubt against the accused-appellant. The learned trial Court has not at all erred in convicting and sentencing him for committing offence u/s 302/ 34, IPC.

19. The appeal has no force and is accordingly dismissed. The impugned judgment and order passed by the trial Court is hereby confirmed.

20. Sri Vinod Singh, Amicus Curiae would get Rs. 2100/- as remuneration which should be paid within a month. Let a certified copy of the judgment be transmitted to the Court concerned and the Chief Judicial Magistrate, Budaun for ensuring compliance, which should be reported within a month.