
(2003) 01 AHC CK 0155
In the Allahabad High Court
Case No : Criminal Appeal No. 1586 of 2002

Ram Babu Jha (in Jail)	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

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

Citation : (2003) 1 ACR 714

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

Bench : Division Bench

Advocate : Sriprakash Dwivedi and Apul Misra, Amicus Curiae, for the Appellant;
G.S. Bisaria, A.G.A. and Ramesh Sinha, for the Respondent

Judgement

M.C. Jain, J.—It is an expedited appeal under the orders of the Hon"ble Chief Justice. The Appellant is one Ram Babu Jha, who has been convicted u/s 302, I.P.C. and sentenced to life imprisonment and to pay a fine of Rs. 15,000 vide judgment and order dated 17.4.2002. The judgment was rendered by Sri P. C. Joshi, the then Sessions Judge, Sonbhadra in Sessions Trial No. 17 of 1994. He was put on trial in the said case with one Kamal Gupta who was acquitted.

2. Broad essentials of the prosecution case may be noted. The life of one Narottam Chand Gotiya was cut short in this incident. The incident took place on 18th September, 1993 at about 10 a.m. near Roadways bus stand, Renukoot, P. S. Pipari, District Sonbhadra. The report was lodged the same day at 10.30 a.m. by Devaki Nandan Dayama P.W. 1, an eye-witness. The distance of the police station from the place of occurrence was about 300 yards. On the fateful day and time, the victim Narottam Chand Gotiya was going by his Maruti car driven by his driver Sudhir Kumar P.W. 2 from his residence situated within the premises of Hindalco to his transport office in town Renukoot. He was sitting on front seat with the driver. The Appellant Ram Babu Jha who shall hereinafter be called "the accused", and one Pankaj Tripathi sought lift in the said car from Narrottam

Chand Gotiya who permitted them to sit on the back seat of the car. However, a little after boarding the car when it reached near the betel shop of one Madan in the vicinity of the bus stand, the accused Ram Babu Jha at once attacked Narrotam Chand Gotiya with a knife, not leaving any opportunity for him to run away from the car, when it had slowed down at the speed breaker near the betel shop aforesaid. The driver Sudhir Kumar P.W. 2 raised shouts for help, soon attracting Krishna Pratap Singh P.W. 5 and Ram Chandra Yadav, constables, K. K. Sharma P.W. 4, owner of a Motor Parts shop, Prem Kumar Agarwal, owner of Omega Transport Company and Devaki Nandan Dayama P.W. 1, Manager of Chand Gotiya Transport who were present nearby, at once rushed to the place of incident. The accused and Pankaj tried to run away but they were chased and overpowered by these persons and apprehended a few steps away along with knives possessed by them. They were taken to the Police Outpost of P. S. Pipari where a report of the incident was lodged by Devaki Nandan Dayama P.W. 1. Narrotam Chand Gotiya who had sustained grievous injuries was taken to Hindalco Hospital where he was declared dead. On the lodging of the F.I.R. a case was registered and investigation followed. It should also be related here that the post-mortem over the dead body of the deceased was conducted by Dr. P. N. Singh P.W. 7 on 18th September, 1993 at 4 p.m. The deceased was about 45 years of age and had died about 6 hours back. The following ante-mortem injuries were found on his person:

- (1) Punctured wound 4-1/2 cm. x 1-1/2 cm. x 9 cm. on right side back. Along with wound, part of right kidney was also cut.
- (2) Punctured wound 3-1/2 cm. x 1-1/2 cm. x 8 cm. on the right side back, 3 cm. below Injury No. 1. Large intestines were also cut along with the wound.
- (3) Punctured wound 3 cm. x 1/2 cm. x 2-1/2 cm. on the right hip.
- (4) Punctured wound 3-1/2 cm. x 1-1/2 cm. x 2 cm. on the right side hip, 1 cm. below injury No. 3.
- (5) Punctured wound 4 cm. x 2 cm. x 7 cm. on the right side abdomen. Abdominal cavity and small intestines were also punctured.
- (6) Punctured wound 4-1/2 cm. x 1-1/2 cm. x 8 cm. on the right side abdomen.
- (7) Punctured wound 3 cm. x 1 cm. 2 cm. on the right upper arm, 8 cm. below right shoulder joint.
- (8) Punctured wound 2 cm. x 1 cm. x 3 cm. on the right forearm just below right elbow joint.
- (9) Incised wound 3 cm. x 1 cm. x skin deep on the right forearm, 6 cm. below right elbow joint.
- (10) Incised wound 2-1/2 cm. x 1-1/2 cm. skin deep on the right aspect of right elbow.

- (11) Incised wound 4-1/2 cm. x 1 cm. x skin deep on the right hand.
- (12) Incised wound 5 cm. x 1 cm. x skin deep on the right palm just below right wrist joint.
- (13) Incised wound 2 cm. x 1 cm. x skin deep on the front of right hand just below right ring finger.
- (14) Incised wound 1 cm. x 1/2 cm. x skin deep on the joint of right middle finger.
- (15) Incised wound 1-1/2 cm. 1-1/2 cm. x skin deep on the right ring finger.
- (16) Incised wound 1 cm. x 1/2 cm. x skin deep on the right little finger.

The cause of death was shock and haemorrhage resulting from ante-mortem injuries.

3. During investigation Kamal Gupta, figured as conspirator for the commission of this crime and he, too, was put on trial with the accused Ram Babu Jha. However, the accused Pankaj Tripathi (non-Appellant) claimed himself to be a juvenile on the date of the incident and proceedings for him were taken separately.

4. The accused pleaded not guilty.

5. The prosecution examined in all nine witnesses including eye-witnesses Devaki Nandan Dayama P.W. 1, Sudhir Kumar P.W. 2, Krishna Kumar Sharma P.W. 4 and Krishna Pratap Singh, P.W. 5. As the trial culminated into conviction of the accused Appellant with the sentence as detailed earlier, he has come up in appeal.

6. The Appellant is in jail and Sri Apul Misra was appointed as amicus curiae to argue out the appeal for him.

7. We have heard Sri Apul Misra, amicus curiae from the side of the Appellant, Sri G. S. Bisaria, learned A.G.A. for the State and Sri Ramesh Sinha, learned Counsel for the complainant. We have also carefully examined the record which has been summoned before us. We propose to deal with the arguments advanced before us in succeeding discussion one by one in the light of evidence and material on record.

8. It has first been argued by the learned amicus curiae appearing for the accused that he had no motive to commit this crime. It should be pointed out that motive is not "sine qua non" for the commission of a crime. Moreover, it takes a back seat in a case of direct ocular account of the commission of a crime by a particular person, as is the case here. It is also pertinent to state that the accused could not plead or prove any enmity with eye-witnesses, the police generally or with the police constable Krishna Pratap Singh P.W. 5 in particular. Therefore, we do not attach any importance to this argument that the prosecution has not proved any motive on the part of the accused for the commission of this crime.

9. Secondly, it is urged that though the accused is said to have been apprehended at the spot, but no injury was found on his person. It has been reasoned that it is against inherent probabilities of the situation. In ordinary course, after having been apprehended at the spot, as alleged by the prosecution, he must have been given a beating by the persons apprehending him as instant reaction to the commission of the alleged crime by him. The argument is that absence of any injury on the person of the accused actually indicates that he was not apprehended at the spot as has wrongly been projected by the prosecution. Reference has been made to his statement u/s 313, Cr. P. C. that he was picked up from his house by Constable Krishna Pratap Singh P.W. 5. We are of the opinion that the contention of the accused of his having been picked up by constable Krishna Pratap Singh P.W. 5 from his house based on his bald statement cannot be accepted. It is wholly incapable of eclipsing and overshadowing the firm and clinching evidence coming through eye-witnesses, namely, Devaki Nandan Dayama P.W. 1, another eye-witness Krishna Kumar Sharma, P.W. 4 and Constable Krishna Pratap Singh P.W. 5, who have emphatically stated that immediately after the incident, the accused had been apprehended at a little distance with knife when he and his companion were in the process of fleeing. So far as this factum is concerned that he did not sustain any injury on being apprehended, we should point out that it does not and cannot lead to the conclusion that he was not apprehended on the spot as alleged by the prosecution. The witnesses apprehending him could not be supposed to take law in their own hands by giving him severe thrashing turning him black and blue. The purpose had been solved that he had been arrested and natural anxiety must have been to hand him over to the police authorities along with weapon of the offence, for being dealt with according to law. To come to the point, we are not prepared to accept that the accused was not apprehended at the spot. We firmly believe that actually he was apprehended at the spot immediately after the incident when he and his companion were attempting to make their escape good.

10. Yet another argument of the learned amicus curiae is that the prosecution did not examine any of the two independent public witnesses (Mahesh Chand Shukla and Shahid Jamal) in whose presence the phard of knife Ex. Ka-1 had been prepared at the police out post Renukoot of P.S. Pipari by Head Constable Harivansh Srivastava P.W. 3. It has also been urged that the phard Ex. Ka-1 was not got signed from the accused by Head Constable Harivansh Srivastava P.W. 3 as admitted by him in his cross-examination. We do not think that it is of any great significance capable of making any dent in the satisfactorily proved case of the prosecution by other clinching evidence of eye-witnesses who had no animus against the accused. It may be pointed out that the phard Ex. Ka-1 does contain the signatures of the informant Devaki Nandan Dayama P.W. 1.

11. On judicial consideration of all the arguments advanced by the learned amicus curiae for the accused as discussed above, we do not locate any merit in any of them.

12. The case against the accused is proved to the hilt beyond any ray of doubt. The incident took place in broad daylight. The F.I.R. was prompt having been lodged within 30 minutes of the incident by an eye-witness Devaki Nandan Dayama P.W. 1, the distance of out post of the police station from place of occurrence being only 300 yards. As mentioned above also, none of the eye-witnesses had any animus against the accused. The eye-witnesses, namely, the informant Devaki Nandan Dayama P.W. 1, driver of the car in which the stabbing took place, namely, Sudhir Kumar P.W. 2, another independent eye-witness Krishna Kumar Sharma, P.W. 4 and constable Krishna Pratap Singh P.W. 5 are the most natural witnesses of the incident who have given plausible explanation for witnessing the incident. Devaki Nandan Dayama P.W. 1 was employed as Manager at the Transport Company of the victim and used to reside in the staff quarters of Hindalco. It was his routine to go in the morning to the transport office at about 10 a.m. On the day of the incident also which occurred at about 10 a.m., he stopped, at the betel shop of Madan to take betel when the Maruti car of the victim stopped at the speed breaker nearby and the driver Sudhir Kumar P.W. 2 crying for help. It was natural that he rushed immediately and could see the accused inflicting knife blows on the victim while his companion was at the door of the car, creating terror with knife. The victim fell down from the car and the accused started running away towards Murdhwā, but was apprehended with the help of two approaching constables (constable Krishna Pratap Singh P.W. 5 and constable Ram Chandra) and other several members of the public who had reached there. It was only at about 10 or 12 paces of the incident that the accused and his companion were apprehended with blood stained knives in their hands which were snatched from them by the two police constable. Sudhir Kumar P.W. 2 was the driver of the car of the victim. He himself sustained injury also in his finger. He has rightly been believed that he saw the victim being stabbed inside the car by the accused. He and Krishna Kumar Sharma P.W. 4 had taken the victim to the hospital in the same car. The victim was declared "brought dead".

13. It is borne out from the testimony of Dr. P. Adokiya, Medical Officer Hindalco Hospital (P.W. 8) also that these two had taken Narrotam Chand Gotiya (victim) before him and he had found him dead. He even stated that Sudhir Kumar P.W. 2 had also an injury in his hand. He was treated in O.P.D. Therefore, the presence of eye-witness Krishna Kumar Sharma at the spot can also not be doubted as he had accompanied the victim to the hospital with the driver of the car immediately after the incident. Constable Krishna Pratap Singh, P.W. 5 also fully supported the prosecution case that on the fateful day and time, he and Ram Chandra Yadav were on patrol duty when they heard shouts and rushed near the shop of Madan panwala (betel seller) where he saw the accused Ram Babu Jha inflicting knife injuries to the victim in a Maruti car and his companion standing by the door of the car with knife creating terror. The driver Sudhir Kumar was crying for help. The accused with his companion tried to run away but they were chased by him and others and were arrested at a little distance along with knives in their hands.

The victim was taken by the driver to the hospital but he and others took the accused to police outpost Renukoot. It was on way to the police out post that two other witnesses Mahesh Chand Shukla and Shahid Jamal met them and they also accompanied them to the police out post where the accused and his companion were handed over to the police and recovery memo of knives as also of blood stained shirts of the accused and his companion were prepared on being taken into custody by the police. The distance of police out post being only 300 yards was too short and the report itself was lodged within half an hour of the incident. No time gap actually intervened. Every part of the happening has truthfully been accounted by the prosecution by trustworthy evidence. We also note from the G.D. relating to the registering of the case at the police out post that Constable Krishna Pratap Singh P.W. 5, constable Ram Chandra Yadav, Mahesh Chand Shukla and Shahid Jamal had accompanied the informant Devaki Nandan Dayama P.W. 1 at the time of the lodging of the F.I.R. where the accused and his companion were also taken with bloodstained knives. It is also noted that blood stained shirt of the accused and blood-stained shirt of his companion had also been taken in possession by the police at the police out post and a phard in this behalf was prepared which is Ex. Ka-2.

14. A look at the post-mortem report of the deceased indicates that knife injuries had mercilessly been inflicted on him which were as many as sixteen in number. Such injuries must have necessarily been inflicted by the accused on the person of the victim from a very close proximity and it was natural that the blood oozing out of some of the injuries splattered on the shirt too of the accused. The ocular testimony rendered by the eye-witnesses is in full conformity of the medical evidence and injuries could have been caused by knife. The injuries sustained by the deceased were capable of being caused by knife as stated by Dr. P. N. Singh P.W. 7 who conducted the autopsy on his dead body.

15. On overall consideration we are in agreement that the judgment recorded by the lower court that the accused Ram Babu Jha committed the murder of unarmed Narrotam Chand Gotiya. The murder was committed by him in a brutal and merciless manner wherefor no justification can be pleaded whatsoever. We shall dismiss the appeal.

16. The appeal is hereby dismissed. The accused Appellant Ram Babu Jha is in jail. He shall serve out the sentence of life imprisonment and shall pay the fine of Rs. 15,000 u/s 302, I.P.C. as awarded to him by the learned lower court.

17. The office is directed to return the record of the lower court along with a copy of this judgment for compliance under intimation to this Court within two months.

18. Sri Apul Misra who argued out the appeal for the Appellant as amicus curiae shall get Rs. 1,000 as fee.