
(2010) 04 UK CK 0091
In the Uttarakhand High Court

Ram Dayal Singh and Another	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2010) 1 UD 408

Hon'ble Judges : Nirmal Yadav, J;B.C.Kandpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Nirmal Yadav, J.—Vide order dated 09.02.2010 passed by this Court, appeal filed on behalf of Ram Dayal has already abated, as Ram Dayal died on 05.09.1999. The appeal is proceeded only on behalf of appellant No. 2 Dotha Devi.

2. Accused Ram Dayal and Dotha Devi stood trial for committing murder of Nand Lal, son of Shyam Singh and nephew of Ram Dayal.

3. The criminal law was set in motion on application (Exhibit Ka 2) submitted by Shyam Singh to Madan Lal Nautiyal, Naib Tehsilder, Narendra Nagar. On the basis of the said application chick First Information Report (Exhibit Ka 3) was recorded on 17.06.1993 at 8.00 p.m. at Patwari Circle Chaka. The complainant stated that he was working as Goldsmith at Satyon. On 17.06.1993, Ashok and Kishori, resident of village Lawa came to him at Satyon in a taxi and informed him about the murder of his son Nand Lal having been committed by accused Ram Dayal (since deceased) and his wife Dotha Devi. On receiving the information, he went to his house at village Lawa in the same taxi and found his son lying dead in the corridor of house. Since Patwari of Chaka Circle was on strike, the written application was given by the complainant to PW 4 Madan Lal Nautiyal, Naib Tehsildar, who was on patrol duty at Chaka. Naib Tehsildar Madan Lal Nautiyal reached the place of occurrence along with peon Prem Singh Payal, Harshpati, Virendra Singh and Jabar Singh. He inspected the spot and found dead body

lying in the corridor of the house of the complainant. He sent his peon Virendra Singh for bringing the forms and other papers required for completing the inquest report while he himself remained at the spot. Virendra Singh, peon came back to the spot on 18.06.1993 at about 8 a.m. along with forms and other papers. Naib Tehsildar Madan Lal Nautiyal, thereafter, prepared the inquest report (Exhibit Ka 7), sketch of the dead body (Exhibit Ka 9), letter to CMO Exhibit Ka 10 and challan of dead body Exhibit Ka 11. He sealed the dead body in a cloth by preparing sample of seal (Exhibit Ka 8). He also recorded the statement of Munni Devi and Shyam Singh u/s 161 Cr.P.C., on 17.06.1993 itself. Accused Ram Dayal was arrested from his house on that very day. On interrogation, he got recovered gupti / knife (Exhibit 1) which was taken into possession vide memo Exhibit Ka 5. He also prepared the site plan of the place of recovery of gupti / knife (Exhibit Ka 6) and site plan of place of occurrence (Exhibit Ka 12). Dead body was removed to Suman Hospital, Narendra Nagar. By that time, strike of the patwaris had ended, therefore, remaining investigation was transferred to PW5 Kapoor Singh Payal, Patwari, Chaka Circle, who conducted the investigation and recorded the statements of other witnesses.

4. After completion the investigation challan was presented and both the accused were charged u/s 302 read with Section 34 of Indian Penal Code to which they pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case produced as many as 5 witnesses. PW1 Munni Devi, wife of the deceased, solitary eye witness of the occurrence. PW2 Dr. S.K. Gupta, who conducted the autopsy and prepared postmortem report (Exhibit Ka 1). PW3 Shyam Singh, father of the deceased. PW 4 Madan Lal Nautiyal, Naib Tehsildar and PW5 Kapoor Singh Payal, Patwari are the Investigating Officers.

6. Dr. S.K. Gupta, conducted the autopsy on 19.06.1993 at about 11.30 a.m. and found the following:

The age of the deceased was about 32 year. Duration of death was 3 days old. On external examination of the dead body, both eye balls were found protruded, tongue was between teeth, bloody froth oozing out of mouth, upper half of the body, chest, both arms neck were bluish and at places reddish near both nipples and side of the chest was reddish. Abdomen was distended. Penis was swollen. Foul smell was coming from body. Blisters were found all over the body. Rigor mortis had passed off. Stool was coming out from anus.

Following ante mortem injuries were found on the body:

1. Punctured wound over the right upper part of the abdomen obliquely placed. Clean cut inverted margin 2 cm X 2 cm. X cavity deep, clots of blood.
2. Reddish contusion in the area of 10 cm X 11 cm on the right side of the chest little away from the nipple.
3. Reddish contusion 10 cm X 8 cm on left side of the chest on the side of left

nipple. On dissection, haemorrhage was found below injury Nos. 2 and 3.

On internal examination membrane, brain, pleura, ribs, cartilages were found congested and larynx, trachea, bronchi were congested and contained froth. Lungs were found congested and were having bright colour blood. The blood was found in chest cavity. Half digested food was present in the intestines. Small intestine and gall bladder were punctured at the level of injury. Cause of death was due to suffocation or smothering.

7. We have heard Mr. Lokendra Dobhal, learned Counsel for the appellant and Mr. Nandan Arya, learned AGA for the State of Uttarakhand and scrutinized the entire on record.

8. The prosecution case mainly rests on the testimony of solitary witness Munni Devi wife of the deceased, who was present in the house at the time of occurrence. It is necessary to mention here that accused Ram Dayal (since deceased) is real brother of Shyam Singh while Dothi Devi is wife of Ram Dayal. It has come in the testimony of Munni Devi that Nand Lal (deceased) was the only son of her father-in-law and Ram Dayal had no son and he had been treating Nand Lal as his own son. Even the marriage of Nand Lal was performed by Ram Dayal. She has further stated that her husband Nand Lal was involved in a murder case and it was Ram Dayal, who had only pursued the case on behalf of her husband. Her husband has been acquitted in the said case. She has further stated that her father-in-law and Ram Dayal have a joint house and all of them were living in the same house. Her mother-in-law is not alive while her father-in-law Shyam Singh is working as Goldsmith in Satyon, who visits the house in Chaka occasionally.

9. With regard to the occurrence, this witness has categorically stated that on 16th day of Ashad at about 8.00 p.m., when she was taking bath, she heard some noise of altercation in the dadiyal (verandah). She immediately came in the verandah and saw that her husband was caught by accused Dothi Devi while Ram Dayal was giving knife blows to him. On receiving injuries, he fell down. On alarm being raised by her, people from neighbourhood also reached the spot. Thereafter, she became unconscious and she was removed to Narendra Nagar.

10. Learned defence counsel challenged the testimony of Munni Devi mainly on the ground that she is highly interested witness being wife of the deceased. He also pointed that her testimony suffers from contradictions on material facts. He referred to her statement made in the cross examination wherein she stated that her husband had come back home at about 8.00 p.m. and at that time she was taking bath. When she reached the verandah of the house altercation had started between her husband and uncle-in-law and aunt-in-law. She further stated she was having bath in the room downstairs and from there the place of occurrence was not visible and for coming from room downstairs to the place of the occurrence, one has to take at least 10 - 12 steps. According to her, the altercation took place for about 5 minutes and knife injury was caused

immediately when altercation started. Thus, it was not possible for her to reach the place of occurrence immediately on hearing the altercation between her husband and the accused persons. He further pointed out that in the examination-in-chief this witness stated that her aunt-in-law i.e. Dotha Devi had caught hold of her husband, however, in the examination she stated that Dotha Devi had caught his underwear only. No overt act has been attributed to Dotha Devi by this witness.

11. Learned Counsel for the appellant further argued that even the medical evidence does not support the ocular testimony of Munni Devi. He pointed out that according to Munni Devi, Ram Dayal caused knife injury to the deceased and there is nothing on the record to show as to how injury Nos. 2 and 3 which are contusions, were caused. Learned Counsel for the appellant pointed out that in the postmortem report, it is mentioned that eye balls were protruded, tongue between teeth and bloody froth was oozing out from the mouth and all these symptoms show that it could be a result of the smothering, however, PW 1 has not stated that she had seen the accused strangulating the deceased.

12. Learned Counsel further argued that it has also come in the testimony of Munni Devi that houses of Bhura Singh, Makkhan Singh and Govind Singh were near their house, however, they did not come to the spot on hearing the noise.

13. On the other hand, learned AGA argued that the testimony of Munni Devi is quite reliable and trustworthy. Her presence at the place of occurrence was natural. There was none at the house of deceased except Munni Devi at the time of occurrence. She had no motive to falsely implicate the accused persons, especially when she has categorically stated that her husband was being treated as their own son by both the accused persons. He further pointed out that medical evidence fully corroborates the testimony of Munni Devi. She stated that she had seen Ram Dayal causing knife / gupti injury to her husband. It may be possible that before the witness had reached the upstairs scuffle might have taken place between the deceased and the accused persons and thereafter, accused Ram Dayal caused knife/ gupti injury to the deceased. Even otherwise, the non explanation of the injury Nos. 2 and 3 which are contusions does not, in any way, demolish the testimony of Munni Devi on material points.

14. On careful consideration of the rival submissions made by learned Counsel for the parties and evidence on record and after going through the testimony of PW1, we find testimony of PW1 Munni Devi to be natural and trustworthy. She had seen the entire occurrence including the exchange of hot words between the accused persons and the deceased. She has categorically stated that on hearing the noise of altercation between accused persons and her husband she immediately came up in the verandah and had seen the entire occurrence. She has been cross examined at length but we find that her testimony is not at all shattered on basic and material points. It is true that Munni Devi is related to deceased and as such, her testimony requires close scrutiny. Keeping this factor in mind, we are of the opinion that Munni Devi does not appear to have any

motive to falsely implicate the accused persons, rather she is appreciative of the accused persons when she stated that they treated her husband like their own son. They were living jointly in the same house. Therefore, there is not even a remote chance to falsely implicate them.

15. It is well established that conviction could be based on the sole testimony of solitary eye witness, however, in order to make a basis of conviction, presence of such witness at the place of occurrence has to be natural and testimony should be strong, reliable and free from any blemish. In the case of *Chuhar Singh v. State of Haryana* reported in 1976 SCC (Cri.) 215, the Apex Court has observed as under:

...What is important is not how many witnesses have been examined by the prosecution but what is the nature and quality of evidence on which it relies. The evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses may fail to support a simple charge of hurt. Since the case must stand or fall by the evidence of "single witness", it is necessary to examine that evidence critically.

16. In the present case, we find that substratum evidence of PW1 Munni Devi does not appear to be false and her testimony appears to be reliable, therefore, we do not find any legal impediment in convicting the accused person on the sole testimony of this witness. Her testimony is fully corroborated by recovery of gupti/ knife at the instance of the accused Ram Dayal and also by medical evidence. As per postmortem report and testimony of PW2 Dr. S.K. Gupta, gall bladder and small intestine were punctured and these injuries could be caused by gupti / knife. Dr. S.K. Gupta has stated that all the ante mortem injuries found on the dead body of the deceased are sufficient to cause death of Nand Lal.

17. The suggestion given to the witness that deceased might have been killed by some other persons on account of enmity does not appear to be probable, as incident took place inside the house of the deceased. There is no occasion for an outsider to enter the house without being noticed by the inmates. Moreover, Munni Devi would not like to spare the real culprits, if the assailants were some other persons. She would not falsely implicate her own uncle-in-law and aunt-in-law with whom she and her husband were having very cordial relations.

18. In view of the above discussion, we do not find any ground to interfere with the impugned judgment passed by the trial court. There is no merit in appeal and the same is dismissed.

19. Accused appellant Dotha Devi, who is on bail vide order dated 17.06.1997, be taken into custody forthwith in order to serve the sentence of life imprisonment as awarded by the trial court. The trial court is directed to ensure the compliance of the order.

20. Let the lower court record be sent back.