
(2003) 02 AHC CK 0034
In the Allahabad High Court
Case No : Criminal Appeal No. 573 of 1981

Ram Muni Yadav and Others (in Jail)	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161
Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 149, 300

Citation : (2003) CriLJ 4131

Hon'ble Judges : M.C. Jain, J;K.N. Ojha, J

Bench : Division Bench

Advocate : Vinay Saran, R.A. Tripathi, L.P. Varma, Kundan Singh, G.C. Saxena and V.S. Dwivedi, for the Appellant; Ratan Singh, A.G.A., for the Respondent

Judgement

M.C. Jain, J.—This appeal has been directed against the judgment and order dated 26th Feb. 1981 passed by Sri Prem Singh, the then Sessions Judge Ghazipur in Sessions Trial No. 176 of 1979. The appellants are Ram Muni Yadav, Kishore Yadav, Shyama Yadav, Phool Chand Yadav, Hardeo Yadav and Daya Ram Yadav Appellants Nos. 1 to 3, namely, Ram Muni Yadav, Kishore Yadav and Shyama Yadav are real

brothers being the sons of Jagpat Yadav. All the appellants have been convicted u/s 302, I.P.C. read with Section 149 I.P.C. and sentenced to life imprisonment, Ram Muni and Phool Chand have further been convicted u/s 148 I.P.C. and each sentenced to two years rigorous imprisonment. The remaining four, namely, Kishore, Shyama, Hardeo and Daya Ram have been convicted u/s 147, I.P.C. with one year's rigorous imprisonment for the said offence. All the substantive sentences have been ordered to run concurrently.

2. The incident took place on 3-6-1978 at about 12 O'Clock in the noon in village singhpur, Police Station Saidpur, district Ghazipur. The distance of Police Station from the place of occurrence was three miles and the F.I.R. was lodged the same

day at 2.50 p.m. by the deceased Dular himself.

3. The relevant facts may be stated briefly. All the appellants are the desendents of a common ancestor. Smt. Mulla was the daughter of appellant Shyama Yadav. Before her second marriage (Gauna), she became pregnant. A Panchayat in the matter was held six months before the incident wherein she admitted her illicit connection with Dular deceased. The result was that the husband of Mulia refused to take her with him. For sometime she was sent to live with a relation but subsequently she was married in Court with one Raja. On this account the appellants bore grudge against Dular. Because of this enmity, the appellants started grazing and uprooting crops of Ram Nandan P.W. 1 father of the deceased. He lodged, a complaint in that connection, but the same was dismissed, the appellants often threatened Dular and he had made applications to the District Magistrate and Superintendent of Police. Ghazipur in this behalf. This was the previous background.

4. Dular used to work at a canal. On the fateful day, he went to his work as usual at 6 A.M. At about 12 O'clock in the noon he was coming back to his home. At that time, Ram Nandan P.W. 1 and Bhimli, father-in-law of Dular were sitting at the well adjoining the house of the former. No sooner Dular came at the spot which was the turning point of village path, all the six appellants armed with lathis, spear and Gandasa surrounded and attacked him. Ram Muni held a Gandasa. Phool Chand held a spear while the rest had lathis. To save his life, Dular ran towards Parti of Hannu. The appellants followed and beat him there too. Munni Lal P.W. 2 and Smt. Murti also reached there. The assailants then retreated. The witnesses carried the injured Dular to the house of Ram Nandan P.W. 1 where Dular dictated the report of the incident to Lalji. With the written report, Ram Nandan P.W. 1 and other witnesses took Dular to the Police Station Saidpur where the report was handed over to Head Moharrir R.N. Pandey P.W. 8 at 2.50 P.M. A case was registered and Constable Talaqat Ali P.W. 6 was deputed to take Dular to P.H.C. (Primary Health Centre) Saidpur. Unfortunately, none of the two Doctors was present there. Mahfuzul Rehman, P.W. 9, Pharmacist of PHC referred the injured to Sadar Hospital, Ghazipur. He was taken to Ghazipur by bus, but on reaching the hospital Dr. K.K. Srivastava P.W. 3 found him dead. He accordingly, sent a note to Kotwali, Ghazipur, informing about this death. SI V. P. Singh P.W. 7 of P.S. Kowali went to the hospital to complete the formalities of the preparation of inquest report and sending the dead body for post-mortem. The investigation was taken up by SI B. K. Tiwari P.W. 4, Station Officer of P. S. Saidpur.

5. The post-mortem over the dead body of the deceased was conducted by Dr. K.P. Singh P. W. 5 on 4-6-1978 at 12 O'clock noon. The deceased was aged about 26 years and about one day had passed since he died. The following ante-mortem injuries were found on his person :

1. An incised vertical wound 1 cm. x 1/4 cm. x cutting through and through the nose on the top starting from the top of the nose. 3.5 cm. below the root of the

nose.

2. An oblique incised wound 1 cm. x 1/2 cm. x 1/2 cm on the left upper lip, 2 cm. medial to the left angle of mouth on the lower margin and inner aspect.

3. An oblique incised wound 1 cm. x 1/4 cm x skin deep on the left side face, 11/2 cm. below and inner to the left angle of the mouth. 4. An oblique incised wound 1/2 cm. x 1/4 cm. x 1/3 cm. on the left side face, 1/2 cm. below injury No. 3.

5. Contusion 8 cm. x 7 cm. on the left side face just below the outer aspect of the left eyebrow.

6. A transverse contusion 9 cm. x 3 cm. on the face just below the root of the nose.

7. Sub-conjunctival haemorrhage in the outer quadrant of the left eye-ball.

8. An oblique incised wound 4 cm. x 1/2 cm. x bone deep on the left side scalp, 10 cm. above the upper margin of the left ear root.

9. Abrasion 1 cm. x 1/2 cm. on the left side back just above the left sacroiliac joint, 4 cm. outer (L) to the midline.

10. Abrasion 2 cm. x 1 cm. on the top of the left shoulder joint, oblique.

11. Abrasion 2 cm. x 2 cm. on the back of the left forearm, 2 cm. above the wrist joint (L).

12. Contusion 9 cm. x 8 cm. on the frontoouter aspect of the right arm, 12 cm. Below the top of the shoulder joint (r) with swelling of the whole arm and fracture of the underlying bone into two pieces.

13. An oblique contusion 12 cm. x 1 cm. on the posteroinner aspect of the Right forearm, 5 cm. below the elbow joint (R).

14. A vertical contusion 12 cm. x 6 cm. on the back of the right forearm and hand 12 cm. below the elbow joint (R).

15. An oblique contusion 12 cm. x 9 cm. on the frontoouter aspect of the right thigh, 8 cm. above the knee joint (R).

16. A lacerated wound 1.5 cm. in diameter x bone deep on the frontal aspect of the right leg, 2 cm. below the right knee joint.

17. Abrasion 1 cm. in diameter on the fronto-medial aspect of the right knee joint on the lower side.

18. An obliquely vertical incised wound 17 cm. x 4 cm. x bone deep on the frontal, aspect of the right leg, 8 cm. below the knee joint (R).

19. An oblique incised wound 1 cm. x 1/2 cm. x skin deep on the inter aspect of the right foot, 1 cm. above the root of the great toe (R).

20. Traumatic swelling 18 cm. x 11 cm. on the dorsum of the right foot starting from the ankle joint (R).

21. An oblique lacerated wound 3 cm. x 1 cm. x bone deep on the frontal aspect of the left leg, 20 cm. below the knee joint (L).

22. An oblique lacerated wound 2 cm. x 1 cm. x bone deep, 1/2 cm. medial to injury No. 21.

23. A lacerated wound 2 cm. x 2 cm. x bone deep on the left leg, 1 cm. below injury No. 22.

24. A lacerated wound 2 cm. x 2 cm. x bone deep on the left leg, 1 1/2 cm. below injury No. 23 with the compound fracture of the tibia bone under it.

25. Traumatic swelling 30 cm. x all round the left leg with the fracture of underlying bones in three pieces.

26. Traumatic swelling 18 cm. x 11 cm. on the dorsal region of the left foot starting from the ankle joint (L).

27. An oblique contusion 12 cm. x 3 cm. on the frontal aspect of the left thigh, 5 cm. above the knee joint (L).

6. The cause of death was shock and haemorrhage owing to the above injuries.

7. At the trial, the prosecution examined in all 9 witnesses, out of whom, Ram Nandan P.W. 1 and Munni Lal P.W. 2 were the witnesses of fact. The defence was of denial. They maintained that the occurrence had taken place the previous night at some other different place. It was a blind murder and nobody witnessed the incident. The prosecution evidence commended itself to the learned trial Judge and the impugned judgment is the result.

8. We have heard Sri Vinay. Saran, learned counsel for the appellants and learned A.G.A. from the side of the State of U.P. in opposition of the appeal. We have also carefully perused the record. The subsequent discussion would relate to the important aspects of the case having regard to the arguments and evidence of the case.

9. There are two types of evidences in this case. First, the F.I.R. of the incident lodged by the deceased himself before his death, which has the character of his dying declaration. Second, the eye-witness account rendered by his father Ram Nandan P.W. 1 and Munni Lal P. W. 2. Both types of evidences has been subjected to criticism by the learned counsel for the appellants. As to the dying declaration (F.I.R.) lodged by the deceased, the submission of the learned counsel for the appellants is that its scribe, namely, Lalji had not been produced. We do not think that non-production of the scribe has any adverse effect on the dying declaration of the deceased, which is in the form of the F.I.R. lodged by him. Even if the scribe Lalji had been produced, it would not have made any difference. The reason is that Ram Nandan P.W. 1 has stated that Lalji is his

grandson. Had he been produced, the argument would have been that he was an interested person. It is for this reason that we say that non-production of the scribe has no adverse effect on the prosecution case.

10. It has next been argued by the learned counsel for the appellants that the F.I.R. was not signed by the deceased. Rather it was thumb marked by him, though it has been admitted by his father Ram Nandan P.W. 1 that he was educated upto X standard. According to the learned counsel, it casts cloud as to the genuineness of the F.I.R. The argument cannot be accepted. The reason is found from perusal of the post mortem report of the deceased. Ante-mortem injury No, 12 sustained by the deceased was contusion 9 cm. x 8 cm, on the fronto-outer aspect of the right arm. 12 cm. below the top of the shoulder joint (R) with swelling of the whole arm and fracture of the underlying bone into two pieces. This being the injury sustained by him on his right arm, it could not at all be possible for him to have signed the F.I.R. There is nothing suspicious that because of such injury he could only thumb-mark the F.I.R. after dictating it to Lalji and after it was read over to him. It is clearly there in the statement of Ram Nandan P.W. 1 that after scribing the F.I.R. at the dictation of Dular, Lalji had read it over to him whereafter, he had thumb-marked it. To the same effect is the statement of Munni Lal P.W. 2. We should also point out that Ram Nandan P.W. 1 and Munni Lal P. W. 2 both had taken the victim to the police station with the F.I.R. and their names are found to be noted in the G.D. relating to registering of the case at the police station on the basis of F.I.R. of Dular (victim).

11. It should also be pointed out that Dular died while being taken from P.H.C. Saidpur to Sadar Hospital, Ghazipur. From police station Saidpur he was sent to P.H.C. Saidpur through Constable Talaqat Ali P.W. 6, but as no Doctor was available there, the Pharmacist M. Rehman P. W. 9 with a letter had referred him to Sadar Hospital, Ghazipur, When Dular was taken to the police station with the F.I.R. by Ram Nandan P.W. 1 and Munni Lal P. W. 2, they could not anticipate at that point of time that he would not survive. It would be too much to impute to these two rustics that they planned and calculated at that time that the F.I.R. should be shown as made by the victim himself so that later on it could be an important piece of evidence in the form of dying declaration. Moreover, there is the testimony of Raj Nath Pandey P.W. 8 that it was the victim Dular who had made over the F.I.R. at the police station on the basis of which he had written the Chik F.I.R. and had made relating entry in the General Diary. He has emphatically stated that at that time Dular was speaking though his condition was serious. He had sent him to P.H.C. Saidpur with a letter through Constable Talaqat Ali. Pharmacist Mafuzurr Rehman P.W. 9 also deposed that Dular was alive at the P.H.C. and because of non-availability of Doctor he had referred him to Sadar Hospital, Ghazipur. It admits of no doubt at all that Dular was conscious and speaking till he was sent from P.H.C. Saidpur to Sadar Hospital Ghazipur and he died somewhere in the way from. Saidpur to Ghazipur, as stated by Constable Talaqat Ali P.W. 6.

12. Learned counsel for the appellants then challenged the dying declaration of the deceased (F.I.R.) on the ground that he could neither speak nor could be conscious after suffering injuries on his face detailed as ante-mortem injuries No. 1 to 7 in his post mortem report. No doubt, the victim had sustained injuries No. 1 to 7 on his face, but it cannot be concluded on the basis of the same that he could not speak on receiving such injuries or would have been rendered unconscious immediately on receiving the same. It may be stated at the risk of repetition that as per Head Constable Raj Nath Pandey, P.W. 8, the victim was speaking when he was taken to the police station with the F.I.R. Pharmacist M. Rehman, P.W. 9 also clearly stated that he was alive when he had referred him from P.H.C. Saidpur to Sadar hospital Ghazipur because of nonavailability of Doctor at P.H.C. We note that it was not even suggested by the defence to Dr. K.P. Singh P.W. 5 who conducted the autopsy on the dead body of the deceased that he could not speak after suffering injuries No. 1 to 7 on his face and in the neighbouring area. Rather his statement is that it was possible that the deceased died at about, 4 or 5 P.M. on 3-6-1978. He also clearly stated that the deceased might have survived for half an hour or 4-5 hours after receiving the injuries. He did not say that the victim would have become unconscious immediately on receiving the injuries. Therefore, there is no basis to argue that the deceased could not speak after receiving injuries on his face or that he had become unconscious after receiving Injuries.

13. Learned counsel for the Appellants then urged that neither the statement of the deceased u/s 161, Cr.P.C. was recorded nor any effort was made for recording his dying declaration before a Magistrate. The objection does not stand a close scrutiny. SI B.K. Tiwari P. W. 4, Investigating Officer of the case, was not present at the police station at the time of lodging the F.I.R. The condition of the victim was precarious. He was struggling between life and death and it was natural that steps were first taken to save his life, if possible. He was, therefore, first sent to P.H.C. Saidpur. However, unfortunately, no Doctor was there and he had to be referred by Pharmacist M. Rehman, P.W. 9 present there to Sadar Hospital Ghazipur. He died on the way before reaching Ghazipur. Judged in right perspective, it was neither possible for recording the statement of the victim u/s 161, Cr.P.C. nor could his dying declaration be recorded before a Magistrate. Hardly any time was available for the same,

14. The learned counsel for the appellants then tried to assail the dying declaration of the deceased by referring to a sentence from the statement of Constable Talaqat Ali P.W. 6. Constable Talaqat Ali P.W. 6 stated that ".....Bus Se Saidpur Se Ghazipur Pahunchane Mein Karib Derh Ghante Laga Hoga. Aahat Bol Nahi Pa Raha Tha..... " Indeed, this singular sentence cannot be divorced from the context in which it was made. The witness stated ".....Bus Se Saidpur Se Ghazipur Pahunchane Mein Karib Derh Gante Laga Hoga. Aahat Bol Nahi. Pa Raha The Ishare Se Chai Pani Mangta Tha....." On proper interpretation, it would mean that though the victim was conscious even while being taken from Saidpur to Sadar Hospital Ghazipur, but. he had stopped

speaking. Naturally, his condition was worsening minute by minute and actually he even died before reaching Ghazipur. But that does not lead to the inference that he was unconscious and not speaking till he was at the police station where he made over the written F.I.R. that he had earlier got scribed by Lalji and had thumbmarked it after it was read over to him.

15. On judging the dying declaration of the deceased from every angle, we find it to be perfectly believable. It has come through the own mouth of the victim in the form of the F.I.R. that his assailants were the present appellants. At that time he was struggling between life and death when every motive of falsehood was silenced and his mind was induced by the most powerful consideration to speak only the truth.

16. Learned counsel for the appellants then urged that the F.I.R. only speaks of an enmity and litigation with the accused persons whereas in the evidence of his father Ram Nandan P.W. 1, another motive has come forth. We should say at the outset that motive alone is not sufficient to determine the culpability. In the present case, motive is not very important otherwise also because the culpability of the accused appellants is established beyond doubt by the dying declaration of the deceased and the eye-witness account rendered by his father Ram Nandan P.W. 1 and Munni Lal P.W. 2. There is a reason also for the second motive of illicit relation of the deceased with Smt. Mulia daughter of Shyama accused having not come through the mouth of the deceased himself in the F.I.R. Ram Nandan P.W. 1 stated that Mulla, was the daughter of Shyama accused who was married in some village and had become pregnant before her Gauna. Some six months before this incident, a Panchayat was held in the village in which she had disclosed about her illicit connection "with Dular. He went on to say that on account of Panchayat the first husband of Mulia did not take her with him and subsequently, she was married in Court with one Raja. On this count, the accused appellants who were the descendants of a common ancestor, bore grudge against Dular. There is a clear reason why Ram Nandan P.W. 1 alone could speak about this motive. It was natural for Dular to have suppressed the illicit relation with Smt. Mulia in his F.I.R. he could not speak about his own misdeed, It explains away the absence of second motive in the F.I.R. lodged by Dular himself, All the accused appellant who are descendants of common ancestor felt very bad and Insulted on account of the deceased having established illicit relation with the daughter of one of them as a result of which her first husband refused to accept her and she had then to be married again with another person. They felt insulted and humiliated in the society and, therefore, Joined hands in doing away with the victim. They had been so ferocious that as many as 27 ante-mortem injuries were inflicted on his person as detailed in his post-mortem report reproduced earlier.

17. Learned counsel for the appellants then submitted that the statement of Munni Lal P.W. 2 was at variance that he did not name Daya Ram appellant as one of the assailants of the deceased. He also picked up a sentence from his

testimony to urge that he was not even an eye witness. Paragraph 18 of his statement has been referred to which is to the effect. "Ghatna Ke Bad Meri Dular Se Batchit Hui, Maine, Puchha Ki Tumko Kaun Mare Hain. Yeh Baat Maine Saidpur ane Par Puccha Tha" We are of the opinion that he had soft corner for Daya Ram and it was for this reason that he excluded him in his testimony before the Court. He admitted that he was a witness in favour of Daya Ram in a case. It was for this reason that though he fully corroborated the version of Ram Nandan P.W. 1, but he excluded Daya Ram. On the basis of the dying declaration of the deceased and statement of Ram Nandan P.W. 1 we firmly believe, as did the trial Court that Daya Ram was one of the assailants of the deceased.

18. So far as the referred portion of the statement of Munni Lal P.W. 2 is concerned, it does not mean that he did not witness the incident. We think that he only wanted to examine the degree of consciousness of Dular at Saidpur. It is also there in his statement that Dular asked him for tea and he gave it to him. The truncated portion of the statement of Munni Lal P.W. 2 does not justify jumping to the conclusion that he was not an eye witness of the incident.

19. On cumulative consideration of the important aspects of the case, dying declaration of the deceased and the eye witness account, we endorse the findings of the learned trial Court that the appellants were the assailants of the deceased who with planning and premeditation mercilessly Inflicted a number of injuries on him and murdered him. Two of them, namely, Ram Muni and Phool Chand carried Gandasa and spear respectively, whereas rest had lathis. All of them made use of their weapons and inflicted injuries on the deceased which resulted in his death. The sentences passed against the appellants also do not call for any interference.

20. The appeal is devoid of merit and we hereby dismiss it. The appellants Ram Muni Yadav, Kishore Yadav, Shyama Yadav, Phool Chand Yadav, Hardeo Yadav and Daya Ram Yadav are on bail. They shall be arrested and lodged in jail to serve out the sentence passed against them by the trial Court.

21. The office shall send a copy of this judgment along with record to the Court below for needful compliance under intimation to this Court within two months.