
(2007) 05 AHC CK 0041
In the Allahabad High Court

Ram Pravesh, Ganesh and Satish Vishwakarma	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 464
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 05 AHC CK 0041

Hon'ble Judges : Saroj Bala, J;Imtiyaz Murtaza, J

Bench : Division Bench

Judgement

Imtiyaz Murtaza, J.—This appeal is directed against the judgment and order dated 12.5.2005 passed by the Additional Sessions Judge, Court No.5, Deoria in S.T. No. 316 of 1997 whereby the appellants have been convicted under Sections 302/34 I.P.C, and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 10,000/- and in default of payment of fine further sentenced to undergo six months simple imprisonment.

2. Briefly suited the prosecution case is that informant Jai Kishun's uncle Ram Nakshaim had land dispute with Ganesh & Satish Vishwakarma. In the night of 10/11th September, 1996 his uncle after taking his meal was sleeping under a covered area (Palani) on a Takhat. At about 3.00 a.m. in the night electric bulb was glowing. Ram Prakash, Satish Vishwakarma and Ganesh were returning after gambling from the Machine of Ram Surat and reached at the door of his uncle. On the exhortation of Ganesh that Ram Nakshatra is troubling them for a long time and he should be killed. Ram Pravesh and Satish Vishwakarma committed. This murder. Hearing the shot he raised an alarm. Chandrika, Smt. Sudama and several other persons witnessed the occurrence and recognized the assailants.

3. The report was lodged at 6.15 A.M. at P.S. Kotwali Deoria. The distance of the police station was 8 km.

4. After registration of the case Inspector Rajenedra Prasad Upadhyay commenced investigation. He reached at the place of occurrence and on his

instruction Sub-inspector Jai Shankar Dubey prepared the inquest memo. He recorded the statement of informant Jai Kishan Yadav, prepared site plan and the statements of witnesses Chhangur Yadav, Ram Surat & Mahesh were also recorded. The dead body was dispatched for post mortem examination on 12.11.96. He also recorded the statement of Smt. Sudami Devi, Ram Pravesh was arrested on 13.11.96. On 14.11.96 he recorded the statement of Chandrika Yadav and the witnesses of inquest report namely Bhagwan Jagdish, Patru, Suresh Tiwari and Gorakhnath After the conclusion of investigation he submitted the charge sheet.

5. The autopsy on the dead body of Ram Nakshatra, Yadav was conducted by Dr. A.P. Yadav, P.W. 6 and noted following ante mortem injuries:

Fire arm wound of entry 3 cm x 3 cm (P.T.) ? cranial cavity deep circular on the (P.T.) posterior part of head just above the (P.T.) Posterior occipital protuberance mar (P.T.) are scored, blackening & tattooing present (P.T.) Thirty seven small metallic pellets and wadding (in three pieces) recovered from the interior of cranial cavity.

6. In the opinion of Doctor the cause of death was coma as a result of ante mortem head injury.

7. The case was committed to the Court of Sessions. The Sessions Judge framed charges u/s 302 34 I.P.C, against the appellants.

8. In order to prove its case, the prosecution examined seven witnesses.

9. P.W. 1, Jai Kishun Yadav deposed that the occurrence took place in the night of 10 11.11.96 at 3 a.m. It was the day of Diwali festival. At that time he reached at the shop of Chandrika in the midnight about 12"0 clock after taking his meal. There was a machine of Ram Surat near the shop of Chandrika, Chandrika, washing outside his shop on a cot. He also sat there and Ram Pravesh, Satish & Ganesh were gambling. At about 3 a.m. Ram Pravesh, Satish & Ganesh started to proceed towards the village. Ram Pravesh took out a country made pistol from his pant and loaded with a cartridge and inserted the pistol on the backside. He was also following them. They reached at the shop of Ram Nakshatra. Ram Nakshatra asked them as to who is going. Ganesh exhorted that ^^lkys ges"kk Vksdk Vkdh djrk gS lkys dks xksyh ekj nks A^^. Ram Pravesh & Satish reached near Ram Nahshaira and Ram Pravesh fired at Ram Nakshatra. He raised an alarm. Chandrika Yadava reached there and wife of Ram Nakshatra also came out of her house. Ram Pravesh, Satish & Ganesh ran away on the northern side. Ram Nakshatra died on the spot. Several persons of the village also collected there. He lodged the report at the police station, which is Ext. Ka. 1.

10. P.W.2 Sudami Devi is wife of the deceased Ram Nakshatra Yadav. She deposed that her husband was murdered about 6-1/2 years ago. It was 3 a.m. and the time of occurrence was a Dewali night. Her husband was reading Ramayan near his shop. The door of the shop was open and an electric bulb was

glowing in the shop. She also sat beside her husband and listening Ramayan. After some time she went inside her house and as soon as she went inside she heard a shot of fire and cries of nephew kishun that Ram Pravesh & others had killed her husband. She came out of her house and saw that Ganesh, Ram Pravesh & Satish were running away on northern side. Chandrika had also arrived there. Her husband was lying dead on a Takhat. The report was lodged by Jai Kishun in the morning.

11. P.W. 3 Chandrika Yadav deposed that Ram Nakshatra was. His uncle and he was murdered about 6-12 years ago at about 3 a.m. His shop was situated in the house of Ram Sural. He also reached there after taking his meal. He used to sleep outside his shop. The day of occurrence was Dewali festival. At, about 12"0 clock Jai Kishun reached there. Prior to that 4-5 persons including Ram Pravesh, Satish, Ganesh and two children belonging to the house of Kunwar Babu were playing cards near his shop. They were talking to each other. At about 3 a.m. Ram Pravesh, Satish, Ganesh and others left the place and Jai Kishun also followed them. He was laying on his cot. He heard the shot of a country made pistol and outcries of Jai Kishun stating that Ram Pravesh had shot his uncle. He reached there and saw, that Jai Kishun and his aunt were present there. The accused were running away towards northern side. The uncle had already died on the spot. Several persons were also collected there. Jai Kishun had lodged the report at the police station.

12. P.W. 4 Gorakh Nath Kunwar deposed that Ram Nakshatra Yadav was murdered in the night of 10/11.11.96. The Inspector had prepared the inquest a report. He was a witness of the inquest report, which Ext. Ka.2.

13. P.W. 5 Jang Bahadur Yadav is Plead constable of Police. He deposed that he was posted as Head Moharrir on 11.11.96 at Police Station Kotwali, Deoria. He had prepared chik F.I.R. on the basis of a written report of Jai Kishun at case crime No. 1028 of 1996. Chik F.I.R. is Ext. Ka.3.

14. P.W. 6 Dr. A.P. Yadav conducted the post mortem examination of the deceased Ram Nakshatra Yadav.

15. P.W. 7 Sub-inspector Rajendra Prasad Upadhyay is investigating officer of the case.

16. The Sessions Judge after considering the evidence on record convicted the appellants as aforesaid. Hence this appeal.

17. The case of the defence was of denial and they did not examine any witness in their defence.

18. We have heard learned Counsel for the appellants and learned A.G.A. for the State and perused the entire record.

19. The learned Counsel for the appellants challenged the findings of the trial court on several grounds.

20. The first submission of the learned Counsel for the appellants is that the presence of the witnesses at the time of occurrence is highly doubtful. It is submitted that according to the statement of P.W. 1, Jai Kishun Yadav his house is at a distance of 150 steps from the house of Ram Nakshatra and his presence at that time highly improbable.

21. We are of the view that this submission had got no substance because he explained his presence on the ground that the night of occurrence being a Diwali night and people do not sleep in that night it is also normal for the people to gamble and it is the case of prosecution that the assailants were returning after gambling from the Machine of Ram Surat.

22. It is also important to mention that Sudama is wife of the deceased Ram Nakshatra Yadav and she deposed that she was present at the door of her house immediately prior to the occurrence as she was listening Ramayan recited by her husband. She went inside her house and immediately thereafter she heard shot and she also heard the outcries of his nephew Kishun. She came out of her room and saw that the assailants were running away. She further stated that Chandrika Yadav. P.W. 3 also reached there. Her version is also corroborated by recovery of a Ramayan near the dead body.

23. P.W. 3, Chandrika Yadav deposed that Jai Kishun came to his house and saw that 4-5 persons including the appellants were gambling near his house. They were talking to each other that being a Diwali night they should not sleep during the night. At about 3 a.m., the persons who were gambling went from there and Jai Kishun also left, he was lying on his cot. After about 5 minutes he heard shot and cries of Jai Kishun. The assailants were running away towards northern side and electric bulb was also glowing. Thus all The witnesses have explained their presence at the time of occurrence and we also find that their presence near the place of occurrence is truthful.

24. The next submission of the learned Counsel for the appellants is that the witnesses have modulated their statements to suit the prosecution case. Learned Counsel for the appellants stated-that in the first information report it was the case of two shots, but in evidence role of firing was assigned to Ram Pravesh only. It is submitted that informant is modulating his statement because in the post mortem examination report only single fire arm injury was found. We do not find any force in this submission because in the first information report there was no specific allegation that both Ram Pravesh and Satish Vishwakarma had fired at the deceased. In fact in the first information report there was no specific allegation that two shots were fired at the deceased. It is important to mention that even the weapons were also not assigned in the first information report. It was mentioned that hearing the shot he raised alarm. In the post mortem report there was a single fire arm injury. It is important to mention that in the first information report all the minute details are not necessary. The informant had mentioned only manner of crime.

25. The next submission-of the learned Counsel for the appellants that occurrence took place in the night and there was no source of light in which assailants could be recognized. The presence of the source of light in recognizing the assailants can not be doubted because being a Diwali night normally people keep their house illuminated and the testimony of P.W. 2 Sudami Devi clearly indicates that the shop was open because of the festival and electric bulb was also glowing. She also stated that deceased was reading and she was listening Ramayan. The reading of Ramayan is not possible in the darkness. Her statement about reading of Ramayan is also corroborated by recovery of Ramayan near the dead body of deceased.

26. Learned Counsel for the appellants further submitted that the appellants had no motive to commit the, offence. It is the case of direct evidence and motive hardly plays any role in this case. There was no reason for the false implication of the appellants. Lastly, the counsel for the appellants submitted that the Sessions Judge has wrongly convicted Satish Vishwakarma and Ganesh for committing the murder of Ram Nakshatra with the aid of Section 34 I.P.C. as it was an individual act of Ram Pravesh. It is pointed out that in the first information report the informant Jai Kishun had mentioned that on the exhortation of Ganesh Ram Pravesh and Satish Vishwakarma committed murder of the deceased. In the first information report it was mentioned that Ganesh had exhorted ^jkeu{k= ge yksxks dkQh fnuks ls ijs"kk u fd;s jgrk gS vkt lkys dks tku ls ekj nks ^^ . In his testimony in court the informant stated that Ganesh had exhorted (sic). The role of exhortation of Ganesh was not corroborated by any other evidence. P.Ws. 2 and 3 also did not hear any exhortation of Ganesh. We find it proper that in the absence of any corroboration it will not be safe to place implicit reliance upon the evidence of exhortation. According to the F.I.R. the role of appellant Satish Vishwakarma was of killing the deceased alongwith Ram Pravesh. P.Ws. 2 and 3 had only seen the appellant fleeing away from the place of occurrence. It is also important to mention that P.W. 2 deposed that she heard the out cries of her nephew Kishan that Ram Pravesh and others fired upon his uncle. P.W. 3 deposed that he heard out cries of Kishan. He said that Chandrika rush up, uncle has been shot by Ram Pravesh. P.W. 1 also did not support his version of the first information report. He deposed that Ram Pravesh took out country made pistol and shot Ram Nakshatra. He did not mention that Ram Pravesh and Satish Vishwakarma had killed the deceased, as was mentioned by him in the first information report. If we closely examine the testimony of P.W. 1 we find that he deposed that Ram Pravesh took out a country made pistol and loaded it and thereafter put on his back. This testimony also shows that he had already made preparation without any participation of other co-accused.

27. In view of the discussion made above we do not feel it safe to affirm the findings of the trial court with regard to the conviction of appellants Satish Vishwakarma and Ganesh and they are acquitted.

28. The appellant Ram Pravesh was charged u/s 302/34 I.P.C. but evidence of record establishes beyond any reasonable doubt that the appellant above was responsible for causing the injury by fire arm which was sufficient in the ordinary course of nature of cause death. The appellant knew the accusation against him and due to absence of charge u/s 302 I.P.C. simpliciter, no failure of justice has been occasioned. Section 464 Cr.P.C. provides that no finding of sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed unless in the opinion of the court in appeal, confirmation, or revision, a failure of justice has in fact been occasioned thereby. Therefore, the appellant is convicted u/s 302 I.P.C. instead of 302/34 I.P.C.

29. In view of the appeal of Ram Pravesh is dismissed. The conviction and sentenced awarded by the dial court is affirmed. The appellant Ram Pravesh is in jail. He shall be kept there to serve out the sentence awarded by the trial court and affirmed by us.

30. The appeal of appellants No. 2 & 3 namely Satish Vishwakarma and Ganesh is allowed. The order dated 12.5.2005 convicting and sentencing the appellants as aforesaid, by the trial court is set aside. They are on bail. They need not surrender. Their bonds and surety bonds are hereby discharged.

31. Office is directed to send a copy of this order To the court concerned within 15 days.

32. The trial court concerned shall submit a compliance report within one month from the date of receipt of a copy of this order.