
(1999) 12 AHC CK 0135
In the Allahabad High Court
Case No : Criminal Appeal No. 1706 of 1980

Ram Veer Singh and Others (In Jail) APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2000) 1 ACR 11

Hon'ble Judges : S.K. Agarwal, J; J.C. Gupta, J

Bench : Division Bench

Advocate : D.N. Wali and Y.K. Shukla, for the Appellant;

Judgement

S.K. Agarwal, J.—This appeal is preferred by Ram Veer Singh, Suresh and Chet Ram alias Chetu against their conviction and sentence u/s 302/34, I.P.C. and Section 201, I.P.C. These Appellants have been sentenced to life imprisonment u/s 302/34, I.P.C. and for four years" rigorous imprisonment u/s 201, I.P.C.

2. The case of the prosecution as available from the F.I.R. and the evidence is that Dalchand along with his wife Smt. Raj Kaur, the informant, and their son had gone to graze their cattle. On their way back at about sun set to their house reached the courtyard of Ganga Ram, they were accosted by the Appellants who came out from behind the bushes. Ram Veer Singh was armed with a gadasa, Suresh was holding a ballam and Chet Ram was possessing a lathi. They started belabouring the victim, Dalchand, with their respective weapons by saying that he should not be spared. The cries of the above witness and the victim attracted to the spot Chottey, Ganga Ram and Dhyan Singh all residents of Mohanpur. On a challenge being given by the witnesses, the assailants started dragging the victim by holding him by his feet. When they were challenged, they rushed towards the witnesses also and the witnesses thereafter abandoned the chase of the assailants. They came back to the village and after sometime the informant had gone to the spot with the village chaukidar. She did not find the body of her

husband at the spot although blood was found lying there. The search for the victim Dalchand was conducted by his wife throughout the night but he could not be located or found. No villager was informed or taken into confidence by her.

3. The motive of this murder as is apparent from the F.I.R. was to avenge the murder of Raghuvir Singh resident of village Bhadaria. Ram Veer Singh was nursing a suspicion that Dalchand, the victim, was instrumental behind the murder of Raghuvir. The F.I.R. of the present incident was lodged at the police station. Ganeshkhera by Smt. Raj Kaur on the next day at 9.15 a.m. The body of the victim was discovered from a pond which was full of water after a month of the occurrence. It was first discovered by the village Chaukidar. He informed Smt. Raj Kaur who identified the corpse so recovered from the pond of village Bhadaria as that of her husband Dalchand. Identity was based solely from the clothes worn by the corpse. After identification of the corpse, she had communicated this information at 7.00 p.m. to the concerned police station.

4. The autopsy on the body was conducted by P.W. 2, Dr. K. S. Tewari. According to him, the body bore no marks of injury. Most of the organs below the neck to the wrist were found missing by the doctor. Scalp too was found missing but the skull bones were found intact. They bore no mark of any injury, i.e., any cut or fracture. The body was found in highly decomposed state. The clothes did not have any mark of weapons or bloodstains. According to the opinion of the Medical Officer (P.W. 2), the death could have occurred 3-4 weeks before the date of the post-mortem examination. The precise estimated time of death given by him is 22-23 days before the post-mortem examination. He has further stated in his examination-in-chief that even if there were ante-mortem injuries, it is beyond doubt that the same may not be found because of the advanced stage of decomposition of the body. He could not decipher the cause of death. The clothes on the body were in a fit condition despite so much decomposition. There was no mark of firearm or sharp cutting weapon on any part of the body of the victim. In the opinion of the doctor, no fracture of bones was detected by him. He has in his cross-examination further stated that the dead body could be five weeks old also. Thus, the medical evidence in this case is not furnishing any corroboration whatsoever to the case of the prosecution to the effect that the recovered body was of a person who met a violent death.

5. The defence has very seriously challenged the identity of the dead body as that of victim Dalchand. This challenge to identity is based upon the fact that there is absolutely no mention of the clothes worn by the victim in the F.I.R. or in the statement of Smt. Raj Kaur made u/s 161, Cr. P.C. Because this body does not in any manner furnish before us any clue that it was subjected to any homicidal violence. No marks of any cut or any hole in clothes recovered from it subscribing to any use of sharp cutting weapons or firearm is yet another circumstances completely negating any such possibility. Had it met any such violence, such marks must have been there on the clothes as well as on intact parts of this body. Not producing the recovered clothes before the Court further

fortifies this conclusion. These omissions are acknowledged by Smt. Raj Kaur, P.W. 1 also in her cross-examination. The Investigating Officer in para 8 of his statement has admitted that he had not noted down the description of the clothes worn by the victim in the specification column of the inquest memo. Thus, there is absolutely nothing before this Court to accept the recovered body as that of victim Dalchand.

6. The defence has also challenged the factum of the incident. Their submission is that the blood recovered by the Investigating Officer from the spot of the incident is a fabrication and no such blood can possibly be recovered by him. They have pointed out to the anomaly occurring in the testimony of P.W. 1, Smt. Raj Kaur. She has admitted in her cross-examination that she had gone to the police station with the blood of her husband which she collected from the spot next morning. According to her, this she did after lodging of the F.I.R. This is very clearly available from her testimony that she first went to police station to lodge her report. After this, she came back and visited the police station with blood a second time after some time. She has further stated that it was raining heavily and it continued to rain throughout the day. According to her, when she had gone to report the case at the police station, it was raining. She did not come out as it continued to rain until evening. In these circumstances, her statement that she had gone with blood taken from the spot to the police station cannot be accepted on its face value. This statement is totally controverted by the Investigating Officer who has stated that he had recovered the blood and simple earth from the spot of occurrence next day. From the statement of P.W. 1, Smt. Raj Kaur, it appears that the rain had started at the early hours of the morning. It is nowhere stated by P.W. 1, Smt. Raj Kaur that she had recovered blood in the night itself. Her statement is that she all along the night, was searching her husband who was dragged away by the assailants. From the above statement of P.W. 1, one thing emerges out very clearly that F.I.R. of the case could not be transcribed at 9.15 a.m. As a matter of fact she herself stated that she did not come out as it was raining. It is her own statement that she visited the police station a second time with blood at 8 a.m. At one point she stated that she had gone to the police station on the day of murder. Thus, these facts we find very difficult to reconcile. In our opinion, from the above facts, the only conclusion that logically flows, is that no time of lodging of the F.I.R. can be fixed in this case. F.I.R. in such circumstances loses all its corroborative value. We safely call it ante-timed or it is recorded after consultation and due deliberation long afterwards.

7. The Investigating Officer has admitted in his cross-examination that the seal of the two containers in which blood-stained earth and simple earth were kept tampered. He had further admitted that if the cloth bearing seal is removed from the container, then it cannot be said to be the blood recovered in this case by mere examination of the containers. He had not sent the blood-stained earth for chemical examination because he was transferred. Although the container containing blood-stained earth bear a label for such examination but it was not sent. The doubt that this blood may be the case property of some other case

cannot be ruled out in these circumstances. No application for sending the blood to chemical analyst was ever moved in Court as such presence of any such slip on such container further strengthens our suspicion. He was unable to disclose the date on which the special report was produced before the authorities concerned. He has admitted that he had not recorded the statement of the constable who carried the special report. He did not record the statement of the informant Smt. Raj Kaur at the police station because he was in a hurry to reach the spot. But the nature of this hurry can be gathered from this fact alone that he claimed to have recovered blood from the spot next morning of the registration of F.I.R. He did not record the statement of the informant promptly even at the spot. He had admitted that he had not sent blood-stained earth for chemical examination because no such earth was recovered from the spot. He further admitted that he had not sent the clothes of the deceased because there was no bloodstains or any marks thereof were available on them. He could not find any marks of dragging of the dead body on the pathway. He also did not find any bundle containing grass or wood collected by the son. Thus, this also reflects heavily not only upon quality and integrity of investigation but also veracity and promptitude of F.I.R.

8. He admitted that he had recorded the statement of Chhotey on 31.8.1978 as this witness was not available earlier. He had denied the suggestion that this witness was not ready to depose and he was forced to depose. He had also denied the suggestion that he did not bring the case diary in the Court because it was transcribed very late. These are the circumstances that make it impossible for us to accept that the dead body which was recovered after one month was the dead body of the deceased and even if we accept this, it does not provide us with any evidence that he was killed by the Appellants or any violence was practised on its person. No doubt in the case of direct evidence, the recovery of a dead body is not material if the witnesses are reliable and the accused can be convicted on the basis of such reliable evidence. But where the prosecution claims the recovery of the dead body and makes an attempt to connect and identify the same as that of victim, complete absence of injuries upon the person of such recovered body as well as absence of any marks of blood or any mark of use of sharp edged weapon or firearm upon the skull and other parts which are intact and clothes recovered further severely dilute the value of such discovery as well as the worth of the testimony of such witnesses with regard to such dead body.

9. So far as the discovery of the dead body is concerned, there is discrepancy between the testimony of Investigating Officer and Babu Ram (P.W. 3) on the points of time of its discovery and also about the fact who brought the information to police station. Babu Ram is chaukidar. It was he who had discovered the dead body at about 10-11.00 a.m. during the day in the pond. He further stated that he had gone to Ganeshkhara and given this information to a woman whose name he did not know. That woman came with him. She told that it was body of her husband. He took the woman to the police station who

informed the police. He denied the suggestion in his cross-examination that he alone gave information at the police station about lying of a dead body in the pond and at that time the woman was not there with him. But all the above facts are rendered useless by his admission that immediately after seeing the dead body in the pond, he had gone to the police station for communicating the information. The police came along with him to the pond itself. The police called that woman and thereafter the said woman had seen the dead body. The Investigating Officer denied this fact completely in his cross-examination. He said that the wife of the deceased brought this information at the police station. At that time he was present at the police station. Chaukidar was not declared hostile. We find ring of truth in the above admissions of this witness. Being a chaukidar it was his first duty to communicate this discovery of a dead body to police before embarking upon the exercise of getting the body identified from the wife of the victim. We are fortified in our conclusion from chaukidar's own statement that he did not know this woman from before. All the above circumstances render the investigation highly suspicious in our opinion.

10. The investigation clearly appears to have been made in this case in a very lacklustre and ingenious manner. There is complete absence of any entry in the general diary with regard to the description of the clothes on the person of the victim at the time of the incident. The complete omission from mention of this fact in the inquest memo leads to the inference that the dead body did not wear any clothes. It did not contain any blood stains or any mark of use of any weapon. Gandasa is said to have been wielded in the case and clothes were bound to have cut marks on the seat of the injuries. These are circumstances which further make the investigation highly perfunctory as the Investigating Officer appears to have sided blindly with the woman whose husband is said to have been killed.

11. Now in the light of the facts discussed above, we will examine the testimony of eye-witnesses Smt. Raj Kaur (P.W. 1) and Chhotey Lal (P.W. 4).

12. P.W. 4 was disowned by the prosecution by declaring him hostile as he said that the assailants were three in number. They were covering their faces by cloth and the darkness had already set in at the time of occurrence and the wife of the deceased had not disclosed any names to him. In our opinion, the testimony of this witness does not help the prosecution at all. On the other hand, it runs contrary to the case of prosecution. He is an independent witness. He has claimed his presence at the spot at the time of occurrence. We do not find any reason for not accepting his testimony. If the darkness had already set in at the time of occurrence took place and the assailants had covered their faces, then it clearly indicates that they were not identified. Most relevant fact in his evidence is that the wife of the deceased Smt. Raj Kaur has not disclosed the name of any of the assailants at the time and at the spot. In his cross-examination, he said that he was called 8-10 days after the incident by the Investigating Officer to the Police Station. The Investigating Officer told him that he had to take the names

of Ram Veer, Suresh and Chetram as assailants. He further said that the Investigating Officer told him that if he would not do so, this case would not be established. When he denied to take these names, he was given threat and was told that if he would not name the above persons as accused, he will be sent behind the bars. His thumb marks were obtained on his statement and after putting thumb marks, he had no talks with the Investigating Officer. He further said that in fact because of the darkness, he could not see anything. He has further admitted in cross-examination that he is not supporting the defence. In our opinion, this witness is telling the truth. If he would have sided with these Appellants, then he would have corroborated their case to the effect that Dalchand was angry with his wife and Ikram. Ikram was visiting the house of Dalchand regularly. He had clearly admitted that the wife of the deceased was not living with Ikram as wife. He categorically admitted that the relations between the Appellants and the deceased were very cordial and until his murder, they were friends. He denied the suggestion that Raghuvir Singh and Dalchand were preventing Ikram from visiting Dalchand's house. He also denied any knowledge about the fact that Ikram is an accused in Raghuvir's murder case. He has admitted that it was 9.00 p.m. in the night when 5-6 persons took away Dalchand towards forest as he came to learn. They had covered their faces with cloth. He could not identify any one of them.

13. Choteylal has already been discussed. He does not support this prosecution case. Failure of the investigating agency to connect the recovered blood with this offence is another circumstance, which goes to the root of the case and the authenticity of the prosecution witnesses. This opens to doubt even the place of occurrence. The Investigating Officer has stated that he recovered the blood whereas P.W. 1, wife of the deceased in her deposition in Court stated that it was taken by herself in the morning after lodging of F.I.R. From her statement, it is clear that she had gone to the police station in the morning a second time with blood.

14. The incident had taken place just 6-7 paces from the village. Her shouts attracted many villagers but no one had reached the spot of the incident. It is alleged that the lady had gone back to the village and returned with the Chaukidar within 3-4 minutes of the occurrence. She remained busy in searching the body of her husband throughout the night but in vain. If she would have begun the search of the body shortly after the incident and continued with it throughout the night, it is not acceptable to us that the assailants would have been able to remove it that far upto pond. In the short span of time of 3-4 minutes, they could not easily dispose of the body. The recovery of blood is also highly doubtful in the present circumstance when the rain started in the early hours of morning and continued till the end of the day. In the circumstances, recovery of blood from the spot on the next day does not deserve consideration. This fact is further fortified from the fact that the Investigating Officer (P.W. 8) has admitted that the seal of two containers containing blood-stained earth and simple earth was tampered. He has further admitted that one of the containers

having simple earth appears to have been sent for chemical examination but the other does not appear to have been sent. We do not want to discuss his evidence any further.

15. P.W. 1, Smt. Raj Kaur appears to us a woman of easy moral fibre. She has admitted that it was the time for returning of the farmers to their houses from the field but further stated that nobody was present in the field except the witnesses and no other witness reached the place of the occurrence. Only Chotey Lal was examined. He has turned hostile and has not supported the prosecution case. This fact is admitted to this woman that she had abandoned her marital home on the very next day of the murder. She had gone with Ikram and admittedly was living with him till the day she came to make her deposition in Court. She was brought from Ganeshkhara on the day of recovery of the dead body which is denied by her own son who admitted that she was not living with him on the relevant date. She was married according to her with Dalchand. From the cross-examination, we do not find any evidence that she was married to Dalchand. On the contrary, we find that in all probability, she eloped with Dalchand. She admitted that she had lived with Dalchand in different places before coming to this village. She further admitted that there was absolutely no bad blood between the deceased and the accused persons. From her deposition and cross-examination, it appears that she was not knowing these assailants. Her making no efforts to contact other villagers after the murder further renders her testimony open to serious doubts. Not a single witness from the village came forward to support her. Even the chaukidar who admittedly helped in her search of her husband during night was also withheld. No explanation worth the name was offered by the prosecution for this lapse.

16. She had culled out a new motive in the statement to the effect that her husband had gone about a month before the occurrence to village Bhadaria along with Ram Veer and Suresh. Ram Veer and Suresh have relation in this village. Her husband had gone there with his licenced gun. Liquor was given to her husband by Ram Veer and Suresh. After consuming liquor, he slept. While he was sleeping these persons fired upon her husband from his own gun. The fire missed and her husband woke up. This fact was told by him on return to her. Her son had started living in fear after learning this fact. This fact was not disclosed by her either in the F.I.R. or in her statement u/s 161, Cr. P.C. For the first time she stated this in the trial court. Bad relation started between her husband and the Appellants after the murder of Raghuvir. She further stated that Ikram is living in village Bhadaria. She admitted that she is living in Bhadaria with Ikram. She denied any knowledge that Ikram is accused in the murder of Raghuvir.

17. Another fact in her testimony of importance is available to us, i.e., filing of an affidavit and an application in the Court of ACJM on 27.10.1975. The defence has not proved these papers properly. The application and affidavit were taken by the trial court on record as exhibits kha-1 and kha 2. She had admitted her thumb mark on these papers. Although she had denied that they were read over to her

or she had any acknowledgment of their contents. In these papers, she has denied accused persons committing the offence of murder of her husband. Technically these papers cannot be taken into consideration by us for the absence of proof by examination of scribe, etc. but undoubtedly once she had admitted her thumb mark on these papers, a suspicion does creep in our mind that this witness is not an honest witness. In these circumstances, we find it very difficult to accept her testimony. Thus, for the forgoing reasons, we discard the testimony of this witness P.W. 1 as unworthy of any reliance against the Appellants. Enormous delay in lodging the report is yet another factor. The explanation that she searched for the whole night along with chaukidar is not acceptable to us.

18. Quality of her statement can further be assessed from her statement that she claimed that she had asked the chaukidar in the night to inform the police about the incident. Whether he went to do this or not, she is unable to tell. How can her initial statement that she searched for her husband with chaukidar all along the night is to be reconciled with this piece of her evidence. This clearly shows that she has too big an appetite for falsehood than truth. In fact, from a careful perusal of her testimony, we feel that she had succeeded in putting the police on wrong track. She with Iqram might themselves have eliminated the victim otherwise why had she left her late husband's house the very next day with Iqram. No Hindu woman worth her salt will ever do this. Even the young child could not chain her, what a mother is she. She has abandoned both.

19. Now we come to the testimony of P.W. 7, Param Jeet, son of the deceased. He had started on a confident note but wilted under the pressure of cross-examination. He denied a suggestion that his mother had gone away with Ikram. He claimed that he did not know Ikram. He had gone to see the dead body before sun rise. The sun came out in the horizon long after he reached there. All this statement is belied by the statement of chaukidar. He further stated in his cross-examination that his father Dalchand was murdered and his dead body was lying in the Kaso. Kaso is known as bushes around the pond. From this statement, it is clear that the murder had taken place at this very place. Subsequently, he had stated that these Appellants were visiting his father and they used to sit in the verandah. They used to call each other by their names and, therefore, he knew them by name. When his memory was tested, he admitted that some other people were also visiting his father but he was unable to describe their names. He again admitted that after the murder for the first time, he had seen them today. He admitted that his mother had gone to police station and he came to the village Ganesh Khera with the police which means that F.I.R. was lodged by him. He denied in cross-examination recording of his statement by Investigating Officer and then accepted that the Investigating Officer has recorded his statement u/s 161, Cr. P.C. In the next breath, he stated that he had given all facts to investigating Officer. He had further admitted that he did not challenge any accused. He claimed that he was staying at a considerable distance from the deceased. The fact of any identification of the

assailants by him in the circumstances is improbable. He admitted that sun had just set. He is not likely to have known these assailants at all. He claimed that the assailants ran towards them and tried to assault. Thus, the circumstances occurring in his testimony lead us to no other inference than the one that he was not an eye-witness of the incident. At the time of the deposition, he was aged about 7-8 years. He had given statement on 11.7.1980. The incident had occurred on 24.8.1978, i.e., nearly 2 years before his deposition. This means that at the time of incident he was 5-6 years. We are, therefore, confident that the child was tutored before his deposition. In this circumstance, we are not ready to place any reliance on his testimony. Moreover having rejected the evidence of P.W. 1, his mother, it will be most unsafe on our part to act upon his evidence alone to convict these Appellants.

20. In view of the above discussion, we allow this appeal and acquit the Appellants of all the charges for which they were convicted. The Appellants are on bail. They need not surrender and their bail bonds are cancelled and sureties discharged.