
(2007) 08 AHC CK 0092
In the Allahabad High Court

Rama Shanker (In Jail)

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 29-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2008) CriLJ 129

Hon'ble Judges : Vijay Kumar Verma, J;S.S. Kulshrestha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vijay Kumar Verma, J.—Both these appeals have been preferred against the judgment and order dated 31.05.1993 passed by 4th Additional Sessions Judge Deoria, in ST. No. 289 of 1991, whereby the appellant Rama Shankar has been convicted and sentenced to undergo imprisonment for life u/s 302 IPC and two years" rigorous imprisonment u/s 201 IPC In Case Crime No. 31/91, P.S. Bhatani, District Deoria.

2. The incident resulting in the death of Akhilesh aged about five years, son of the complainant Smt. Guddi wife of Ram Kripal r/o village Ghati, P.S. Bhatani, District Deoria occurred In the morning of 17.03.1991. The case of the prosecution as appearing from the First Information Report (Ext. Ka 11) and statement of Smt. Guddi (P.W. 1), in brief, is that on 17,03.1991 at about 5.00 a.m. the complainant along with her daughters Basanti and Babi had gone to attend natural call out side the village abadi leaving her son Akhilesh sleeping on the cot. The appellant-accused Rama Shankar, who is the Bhasur (jeth) of the complainant, was standing on his door. There was enmity between Rama Shankar and husband of complainant, because Rama Shankar had doubt that his wife has been kept by the husband of the complainant. When the complainant and her daughters came back to their house after easing themselves, Akhilesh was not found on the cot. He was searched here and there, but in vain. When the

search of Akhilesh was being made, Lallan Pandey and Moti Chand Sonar came to the house of the complainant and told that her son has been thrown by Rama Shankar in the well of Ram Nagina Tewari. On this information, the complainant and other village people reached on the well and dead body of Akhilesh was taken out. Thereafter, the complainant got the written report (Ext. Ka 1) scribed by village Pradhan Rama Shankar Rai, who went to P.S. Bhatani and handed over the report there.

3. P.W. 4 Harshnath Yadav was posted as Head Moharrir at P.S. Bhatani on 17.03.1991. He prepared chik FIR (Ext. Ka 11) on the basis of aforesaid written report and registered a case u/s 302/201 IPC at Crime No. 31/91 on 17.03.1991 at 9.15 a.m. against the appellant. Entry in G.D. No. 16 regarding registration of the case was also made by him vide Ext. Ka 12.

4. P.W. 5 Ram Niwas Pandey, who was posted as Station Officer of P.S. Bhatni, took up the investigation in his hands. He along with other police personnel reached on the well of Ram Nagina Tewari, situated within the limits of village Dharamkhore Babu. Inquest proceedings on the dead body was conducted on 17.03.1991 between 10.30 a.m. to 11.45 a.m., during which inquest report (Ext. Ka 8), two letters (Ext. Ka 2 and Ext. Ka 3) to the CMO Deoria, photo Nash (Ext. Ka 5) and form No. 33 (Ext. Ka 6) were prepared. Thereafter the dead body in sealed condition was carried to mortuary Deoria by constable Vijay Kumar Singh and H.G. Heera Man for post-mortem examination, which was conducted by Dr. J.P. Pandey P.W. 6 on 18.03.1991 at 2.00 p.m. The following ante mortem injury was found on the person of deceased.

1 Contusion 6.5 cm x 3.5 cm is present on the front of the neck 3 cms above sternal notch. Surface of skin above injury is abraded.

In internal examination brain was found congested, Hyoid bone was fractured, upper respiratory tract contained forth. Both lungs were congested and distended, on cutting tissue exude -frothy dark fluid was found. Faecal matter and gases were found In small and large intestines, Gall Bladder was full.

According to the post-mortem report Ext. Ka 13, death was caused due to asphyxia as a result of ante mortem injury. Duration of death was about one and half day old.

5. During investigation, statements of witnesses were recorded, site plan (Ext. Ka 9) was prepared and after completion of the investigation, charge-sheet (Ext. Ka 10) u/s 302/201 IPC was submitted against appellant.

6. On the case being committed to the court of session for trial, charge u/s 302/201 IPC was framed against the accused-appellant, to which he pleaded not guilty and claimed to be tried.

7. The prosecution in order to prove its case has examined six witnesses in all. P.W. 1 Smt. Guddi is the complainant. She has supported FIR version in her statement recorded on 25.07.1992. Written report Ext. Ka 1 has been proved by

her. P.W. 2 Lallan Pandey and P.W. 3 Moti Chand are the eye witnesses of the Incident of throwing the deceased in the well. P.W.4 Harsh Nath Yadav is the scribe of chik FIR and G.D. of registration of case. P.W. 5 S.I. Ram Niwas Pandey is the Investigating Officer. P.W. 6 Dr. J.P. Pandey had conducted post-mortem examination on the dead body. He has proved post-mortem report Ext. Ka 13.

8. In his statement recorded u/s 313 Cr. P.C., the accused has denied all the allegations of the prosecution and he has stated that due to enmity, he has been falsely Implicated In this case. It is further stated by the appellant that about 20-25 years ago he had fallen down from train, due to which he is unable to run and he is also not mentally well.

9. The appellant-accused has not led any evidence in defence.

10. After taking entire evidence into consideration, the learned Trial Court convicted and sentenced the appellant as aforesaid. Hence these appeals.

11. We have heard Dr. Abida Syeed learned amicus curiae appearing for the appellant and learned AGA for the State and perused the impugned judgment and entire evidence on record carefully.

12. Main witnesses in this case are Lallan Pandey P.W.2 and Moti Chand P.W. 3, who had seen the appellant-accused Rama Shankar throwing the deceased Akhilesh in the well of Ram Nagina Tewari in the morning of 17.03.1991. Statement of P.W. 2 Lallan Pandey was recorded on 03.08.1992. He has stated that about 16-1/2 months ago at about 5.15 a.m. he had gone to ease himself in southern western side of village and when after easing himself, he was coming back to his house along with Moti Chand Sonar, they saw the accused Rama Shankar carrying a boy on his shoulder and throwing him in the well of Ram Nagina Tiwari. It is further stated by this witness that after throwing the boy in the well, the accused fled away in arahar field towards west- southern side. They chased him for some distance, but he ran away. Thereafter, they came to the house of Ram Kripal and informed his wife that her son has been thrown by Rama Shankar in the well of Ram Nagina Tewari. P.W.3 Moti Chand supporting the statement of Lallan Pandey has stated in his statement recorded on 26.08.1992 that about 17 months ago when he and Lallan Pandey were coming back after easing themselves, they saw Rama Shankar carrying a boy on his shoulder, who after throwing the boy in the well fled away towards southern side. This witness has further stated that he and Lallan Pandey chased Rama Shankar for some distance, but they could not catch him and he fled away in arahar field. The witness Moti Chand also has stated that he and Lallan Pandey went to the house of Ram Kripal and informed his wife that her son has been thrown in the well of Ram Nagina Tewari by Rama Shankar. It is further stated by this witness that on their information, the wife of Ram Kripal and other village people along with Pradhan Rama Shankar Rai went to the well of Ram Nagina Tewari and got the dead body of the son of the complainant taken out from the well through Gobardhan. Lengthy cross-examination from both these witnesses has been

made on behalf of appellant-accused, but nothing material could be elicited from them in their cross-examination. They both are natural witnesses, because the people in village generally go to ease themselves early In the morning in the fields out side the village abadi. Both these witnesses had seen the appellant-accused Rama Shankar throwing a boy in the well of Ram Nagina Tewari situated within the limits of village of Dharamkhor Babu. On their information, the dead body of Akhilesh, minor son of Smt. Guddi was taken out from the well. As such, on the basis of the testimony of these witnesses, this fact is established beyond reasonable doubt that the deceased was thrown by the accused Rama Shankar in the well of Ram Nagina Tewari in the morning of the day of occurrence.

13. From the post-mortem report Ext. Ka 13, this fact is borne out that there was ante mortem contusion measuring 6.5 cm x 3.5 cm. on the front of the neck, 3 cms above sternal notch. This ante-mortem injury caused asphyxia resulting in the death of deceased.

14. It was submitted by learned amicus curiae that there are some contradictions in the statements of the witnesses Lallan Pandey and Moti Chand. We have carefully gone through the statements of these witnesses. In our view there is no material contradiction in the statements of these witnesses adversely affecting their testimony. On the basis of some minor contradictions, the testimony of these witnesses cannot be discarded, because on all material points their testimony is worth relying. Both these witnesses have no enmity with the accused Rama Shankar and there is no reason for them to make false statement against him. When the witnesses Lallan Pandey and Moti Chand have no relation with the complainant and they also have no enmity with the accused-appellant, then why they would make false statement against the appellant in heinous crime like murder. For all these reasons, we are of considered view that the learned Trial Judge has not committed any error in placing reliance in testimony of these witnesses.

15. From the testimony of the complainant Smt. Guddi (P.W. 1) this fact is borne out that the appellant-accused Rama Sahkar was having enmity with her husband, because he had doubt that her husband had kept his wife. Smt. Guddi has stated in her statement that accused Rama Shankar used to say " INKO NIRBANS (NISANTAN) KAR DUNGA AUR INKE GHAR MEN DIYA JALANE KE LIYA KISI KO NAHIN CHORUNGA". No cross examination has been made from Smt. Guddi Devi on the point of enmity and there is no reason to disbelieve her on this point. From the statement of Smt. Guddi this fact is also borne out that the accused Rama Shankar had seen her and her daughters while going to attend the natural call, because he was standing on his door at that time. The testimony of the complainant also is worth relying and the learned Trial Court has rightly believed her.

16. It was vehemently contended by learned amicus curiae that FIR of this case is ante timed and was lodged after Inquest proceeding of the dead body, because name of the accused is not mentioned In the Inquest report and it is only stated

in the opinion portion that some body had thrown the boy In the well due to which his death has been caused. The contention of learned amicus curiae was that had the FIR was lodged prior to inquest proceedings, then name of the appellant-accused Rama Shakar would have been mentioned In the Inquest report and since his name has not been mentioned in the inquest report, hence inference will be drawn that the FIR was not in existence at the time of inquest proceedings. We are not impressed with this submission of the learned amicus curiae. The inquest proceeding is conducted u/s 174 Cr.P.C. The scope of inquest proceedings is limited to ascertain the cause of death. Mention of the name of accused and eye witnesses in the inquest report is not necessary. In this regard, reference may be made to the case of Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P., and Amar Singh Vs. Balwinder Singh and Others, In view of the law laid down by Hon''ble Apex Court, due to non mentioning of the name of accused Rama Shankar in the inquest report, it cannot be inferred, that FIR was not in existence at the time of inquest proceedings.

17. Next submission made by learned amicus curiae was that there was no motive for the appellant-accused to commit the murder of his real nephew and even if it is assumed that the appellant was having doubt that husband of the complainant had kept his wife, then, in that situation the appellant-accused instead of committing murder of innocent child, would have either committed the murder of his wife or his brother Ram Kripal, husband of the complainant. To some extent, this argument of learned amicus curiae is attractive, but it cannot be made the basis of acquittal of appellant, because on the basis of direct testimony of the witnesses Lallan Pandey and Moti Chand, it has been proved beyond reasonable doubt that the appellant- accused Rama Shankar had thrown the deceased in the well. It is well settled principle of law that where there is direct reliable evidence to prove the crime, the matter of motive loses significance. In the case of Thaman Kumar Vs. State of Union Territory of Chandigarh, . the Apex Court has observed as under:

There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, It must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trust worthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved.

18. In the case of State of Himachal Pradesh Vs. Jeet Singh, . the Apex Court has made the following observations:

No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the Inability to further put on record the manner In which such Ire would have swelled up In the mind of the

offender to such a degree as to Impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.

19. Much thrust was laid by the learned amicus curiae on the point of non availability of water in the abdomen of deceased. In this regard it was submitted by learned amicus curiae that incident did not occur in the manner as alleged by the witnesses Lallan Pandey and Moti Chand, because had the dead body of the deceased was found in the well, water must have been filled in the abdomen of deceased. On this point Dr. J.P. Pandey (P.W. 6) has stated in his statement that filling of water in the abdomen after death is not possible. There Is no reason to disbelieve Dr. Pandey on this point. On the basis of the post-mortem report Ext. Ka 13, it is established that the death of the deceased was caused due to asphyxia as a result of ante mortem injury. From the evidence of witnesses Lallan Pandey & Moti Chand it is fully proved that the appellant-accused Rama Shakar had thrown the deceased in the well of Ram Nagina Tiwari. Therefore, the case of the prosecution cannot be thrown out due to non-availability of water in the abdomen of deceased.

20. For the reasons mentioned above, interference by this Court in the impugned Judgment is not warranted.

21. Consequently, both the appeals are hereby dismissed. The conviction and sentence of the appellant Rama Shankar awarded by the Trial Court is affirmed. The appellant is under going sentence in jail. He shall be kept there to serve out the remaining sentence.

22. Amicus curiae Dr. Abida Syed will get Rs. 5000/- (Rupees five thousand only) as her fee.

23. Office Is directed to communicate this judgment within a week to the appellant through CJM Deoria and return trial court record expeditiously.