
(2004) 05 AHC CK 0192
In the Allahabad High Court
Case No : Criminal Appeal No. 673 of 1981

Rameshwar and Lotan (In Jail) APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:

Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2004) 05 AHC CK 0192

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

Bench : Division Bench

Advocate : Viresh Mishra, Amit Mishra, Kamal Krishna, Suraj Nath Pandey, P.K. Tewari, G.S. Chaturvedi, P.C. Chaturvedi, Gurpratap Singh and Sarabjeet Singh, for the Appellant; A.K. Dwivedi and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M.C. Jain, J.—Three persons, namely, Rameshwar, Lotan and Suraj Pal were tried in Sessions Trial No. 413 of 1979 before the III Additional Sessions Judge, Aligarh. By the impugned judgment, all of them came to be convicted u/s 302 read with Section 149 I.P.C. with a sentence of life imprisonment for having murdered one Rajendra and u/s 307 read with Section 149 I.P.C. with a sentence of 7 years" rigorous imprisonment for having injured Gyanendra. Rameshwar and Lotan were further convicted u/s 148 I.P.C. with sentence of two years" rigorous imprisonment passed against each of them while Suraj Pal was convicted u/s 147 I.P.C. with sentence of one year"s rigorous imprisonment. All the sentences were directed to run concurrently.

2. Suraj Pal filed Criminal Appeal No. 581 of 1981 whereas Criminal Appeal No. 673 of 1981 has been filed by the other two appellants Rameshwar and Lotan. Suraj Pal died during the pendency of appeal and as such his appeal abated under order 12.3.2004.

3. The other Criminal appeal No. 673 of 1981 filed by the appellants Rameshwar

and Lotan is the subject matter of the present decision.

4. The relevant fact may be stated shortly. The incident occurred on 22.11.1978 at 1 O" clock in the night in village Darshana, P.S. Mursan, District Aligarh and the F.I.R. was lodged the same night at 2.55 A.M. by Gyanendra PW 1 (injured), brother of the deceased Rajendra. Accused appellants Rameshwar and Lotan are distant cousins while the deceased accused appellant Suraj Pal was employed by Rameshwar for agricultural work on his fields and he resided at his house. Rameshwar and Lotan also resided in the same village Darshana where the deceased Rajendra and Gyanendra PW 1 resided. About a furlong away from the house of Gyanendra PW 1 there was 50 bighas chak of cultivatory land belonging to him on which there was a diesel engine for irrigation purposes. Two Pakka Kotharies also existed there and the diesel engine was placed in one of them. Gyanendra PW 1 and Rajendra, deceased were sleeping in the Kothari of their tubewell. In between the fateful night, 5 or 6 persons including Rameshwar, Lotan and Suraj Pal appeared there at about 1 O" clock. Accused Rameshwar and Lotan were armed with countrymade pistols whereas the accused Suraj Pal was carrying a lathi. These three were inside the Kothari while 2 or 3 persons with lathis were visible outside the Kothari. There was grappling between Gyanendra PW 1 and accused appellant Lotan during the course of which Lotan fired twice upon him. Rameshwar fired upon the deceased Rajendra in consequence whereof he died at the spot. A lantern was glowing in the Kothari at that time in which Gyanendra PW 1 identified Rameshwar, Lotan and Suraj Pal. The background for the incident was that there was ill-will and litigation between the family of the deceased and the accused Rameshwar and Lotan. About two months before the incident, a complaint from the side of the informant u/s 395 I.P.C. was filed in which Lotan etc. had been acquitted. The said acquittal emboldened the accused appellants to take revenge.

5. After the incident, Gyanendra PW 1 and deceased Rajendra were taken to the Civil Hospital, Hathras where they reached at about 2.30 O" clock in the night. Rajendra was declared to be dead and Gyanendra PW 1 was medically examined by Dr Nand Kumar Sharma PW 6. The following injuries were found on his person:

1. Multiple small rounded abrasions in the left pectoral region of chest, inflammatory swelling in an area of 20 cm x 12 cm with reddish discolouration, about 20-25 in number, individual abrasion measuring 0.2 cm 0.25 cm x 0.2 cm 0.25 cm.

2. A lacerated wound on the anterior aspect of left wrist extending medially up to the proximal 1/3rd of left palm with blackening of the margins of the wound, blackening being much more marked on medial side of the wrist and palm, measurement 10 cm x 7.5 cm (approximately) x muscle deep with exposure of fractured hone at the wrist joint and fresh bleeding.

6. Post-mortem over the dead body of the deceased Rajendra was conducted by Dr S.C. Agrawal PW 5 on 22.11.1978 at 3 P.M. The dead body had been taken for

post-mortem by Brijraj Singh PW 2. The deceased was aged about 27 years and about half day had passed since he died. The following ante-mortem injury was found on his person:

1. Gunshot wound of entry 2 cm x 2 cm x chest cavity deep on right side of chest a bit lateral, 3.6 cm away from right nipple at 10 O'clock position at the distance of 5 cm from tip of ant axillary fold. Margins are inverted. Blackening and tattooing present around the wound.

On dissection of the left side back, 12 small metallic shots were found embedded in the scapular muscles of back.

7. The cause of death was shock and haemorrhage as a result of gunshot injury sustained by him.

8. Consequent upon the lodging of the F.I.R., a case was registered and investigation commenced by S.I. Prempal Singh Chauhan PW 4.

9. The defence was of denial. The present accused appellants Rameshwar and Lotan pleaded to have been falsely implicated due to party factions.

10. The prosecution case rested solely on the testimony of Gyanendra PW 1, injured. The trial judge found case to be proved and recorded the impugned judgment.

11. We have heard Sri Viresh Mishra, learned Senior Advocate assisted by Sri Amit Mishra for the appellants and Sri A.K. Dwivedi, learned A.G.A. from the side of the State.

12. The submission from the side of the appellants, in the main, is that there was no source of light and because of existing enmity, the sole witness Gyanendra PW 1 could not be believed without collaboration by independent sources.

13. On cumulative consideration of the evidence on record in conjunction with concomitant circumstances, we are of the definite opinion that the impugned judgment of conviction cannot be sustained. We intend to spell out the reasons for the same in the succeeding discussion.

14. As is obvious, Gyanendra PW 1 (injured) is the only witness of the incident examined from the side of the prosecution. It needs no debate that no particular number of witnesses is required to establish or to prove a case. The conviction can be based on the testimony of a single witness if he is wholly reliable. A bare perusal of Section 134 of Indian Evidence Act, 1872 makes it clear. It states that no particular number of witnesses is required to establish a case. To be short, if the evidence is unblemished and beyond all possible criticism and the court is satisfied that the witness is speaking the truth, then on his evidence alone conviction can be based. However, the corroboration is necessary in case solitary witness is found to be partially reliable. When the evidence is only partly reliable, the prosecution must provide independent corroboration.

15. In the case at hand, there was long history of enmity between the two sides. The enmity, as adage goes, cuts both ways. It may actuate a person to commit a crime and at the same time may be the cause of false implication. The test is as to who was aggrieved and which way the grievance pinched. In the present case, as per the F.I.R. and statement of Gyanendra PW 1, about two months before the incident, a complaint case u/s 395 I.P.C. started by Mar Prasad (cousin of Gyanendra PW 1) against Lotan, father of the accused Rameshwar and twenty other persons had resulted in acquittal and such acquittal had given a boosting to the accused appellants emboldening them to commit this crime. Now, owing to the acquittal, the grievance could be to Gyanendra PW 1 and his cousin Har Prasad, and not to the accused Lotan and Rameshwar. Therefore, going by the latest motive assigned by the prosecution, the chances were more of false implication of the accused appellants than of their indulging in this crime. To say in a word, the motive for the commission of this crime assigned by the prosecution did not advance the prosecution case any farther.

16. Of course, Gyanendra PW 1 was an injured witness and his presence at the spot could not be doubted. Though his presence is guaranteed, but there is no guarantee regarding the truth of the statement made by him. Veracity of his statement, uncorroborated by any independent witness, is to be tested to the anvil of probabilities.

17. It may also be stated at this juncture that Suresh, Har Prasad and Hira Lal were named as eyewitnesses in the F.I.R. who had allegedly identified the accused in the light of torches, but all of them were withheld and none was produced without there being any plausible reason. They were simply got discharged by making an application that they were near relations of the deceased and the injured and that there was no use of producing them. Their relationship alone with the deceased and injured could not be a valid ground for not producing them. Had any of them been produced, it could be tested whether his testimony was consistent with that of the injured Gyanendra PW 1. So, it was not a case where other witnesses were not available. Despite the availability of the other witnesses, who had allegedly seen the incident and identified by the accused in the light of torches, they were not produced. The prosecution chose to rely upon the testimony of the injured informant alone, despite there being long standing enmity between the two sides.

18. While scrutinizing the testimony of Gyanendra PW 1, it has to be kept in mind that the incident took place at the dead of night at about 1 A.M. in the month of November when he and his brother were allegedly sleeping in the Kothari of their tubewell. Going by the hour of the incident, it was the time when they would have been fast asleep. It is in his testimony that a lantern was glowing. The evidence is that Rameshwar, Lotan and Suraj Pal entered the Kothari in which he and his brother were sleeping. Rameshwar and Lotan had countrymade pistols whereas Suraj Pal had a lathi. Two or three other miscreants were visible standing outside the Kothari with lathis. He claimed to have identified

Rameshwar, Lotan and Suraj Pal in the light of the lantern. Ordinarily, the flame of the lantern would have been dimmed to facilitate sound sleeping, instead of letting it glow brightly. It sounds to be a little unnatural that he would have awoken from deep slumber simply on the entry of Rameshwar, Lotan and Suraj Pal in the Kothari and would have correctly identified them in the dim-light of lantern in the moment of crisis. He claimed that he grappled with Lotan who opened two shots causing injuries to him and Rameshwar opened fire on Rajendra. When two of them, namely, Rameshwar and Lotan were armed with countrymade pistols, they would not have lost even a second in the opening shots after entering the Kothari and there could hardly be any occasion for the witness to awake and grapple with Lotan before the shots were fired. The possibility of misidentification or the accused appellants being named owing to enmity could not be ruled out, having regard to the entire set of circumstances and the manner in which the incident is said to have taken place in the dead of night. The single injured eyewitness, who was highly inimical, was not wholly reliable. Doubtless, he being an injured was present at the spot, but the prosecution, relying on the testimony of this inimical witness, does not succeed in establishing with certainty that the assailants were the accused appellants. It is settled principle of the criminal law that it is for the prosecution to prove the guilt of accused beyond reasonable doubt. This burden has not been discharged by the prosecution in this case. It even chose not to examine the other eyewitnesses who had allegedly witnessed the incident in the light of torches and had identified the accused appellants. The conviction could not be based merely on conjectural inferences. It is also a factor to be noted that the accused Rameshwar, Lotan and Suraj Pal were allegedly accompanied by 2 or 3 unknown persons who were visible outside the Kothari with lathis. It indicates as if that the incident was preplanned. Normally, in planned crimes the culprits take necessary precaution in approaching the victim and then plan out a safer line of retreat. The accused Rameshwar, Lotan and Suraj Pal were very well known to Gyanendra PW 1 and it was hardly necessary for them to go to the spot and take the risk when 2 or 3 hired assailants were already available to them. It is doubtful that the accused Rameshwar, Lotan and Suraj Pal would have gone to commit this crime without covering their laces. There is nothing on record to suggest that they were hazardous characters to have indulged in this crime open facedly.

19. The testimony of the sole eyewitness Gyanendra PW 1 considered in the light of all the relevant factors and circumstances does not bear the test of credibility. The possibility cannot be ruled out that he named Rameshwar, Lotan and Suraj Pal on the basis of suspicion owing to the previous background. The prosecution case suffers from material infirmities and inherent improbabilities. In our opinion, the occurrence took place during the dark hours and the prosecution has failed to connect the appellants with this crime.

20. In view of the above discussion, we allow this appeal and set aside the conviction and sentences passed against the accused appellants Rameshwar and

Lotan. They are already on bail.

21. The judgment be immediately certified to the lower court and compliance be reported to this court after incorporating necessary entry in relevant register within two months from the date of receipt of a copy of this order.