
(2003) 05 AHC CK 0155

In the Allahabad High Court

Case No : Criminal Appeal No. 3155 of 1981 and 17 of 1982

Ramzan and Ors.; Ibne Hasan and Anr.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (2003) 05 AHC CK 0155

Hon'ble Judges : U.S.Tripathi, J and V.N.Singh, J

Final Decision : Disposed Of

Judgement

V.N. Singh, J.—Criminal Appeal No. 3115 of 1981 has been filed by appellants Ramzan, Akbar and Dost Mohammad and criminal appeal No. 17 of 1982 has been filed by appellants Ibne Hasan and Abdul Hadi against the judgment dated 21121981 passed in S.T. No. 719 of 1980 State v. Ramzan (Crime No. 116 of 1978, under Sections 147, 148, 302 read with Section 149 IPC Police Station Sultanpur Ghosh, District Fatehpur) by Sri Dinesh Chandra, the then IV Addl. District Sessions Judge, Fatehpur, by which, all the appellants were convicted under Sections 148 and 302 read with Section 149 IPC and they have been sentenced to life imprisonment under Section 302 read with Section 149 IPC and two years R.I. under Section 148 IPC.

2. As both the appeals filed against the same judgment by the appellants have been consolidated, hence they are disposed of together by a common judgment.

3. The fact of the prosecution case, in brief, is that, complainant Amarnath alias Kulli son of Ramdhani lodged a report at Police Station Sultanpur Ghosh, district Fatehpur on 291978 at 11.45 a.m. against Ramzan son of Mullu, Ibne Hasan son of Dargahi, Akbar son of Ramzan, Abdul Hadi son of Abdul Sattar, Dost Mohammad son of Ali Raza, and Rubab son of Jamaluddin.

4. The contention of the complainant in the written report is that on 1121978 at about 6.30 p.m. Ramzan, Akbar, Dost Mohammad, Ebne Hasan and Abdul Hadi,

armed with single barrel guns alongwith Ruaab armed with double barrel gun came to his door where his wife Gulaba Devi, his sisterinlaw Smt. Gyanwati, his brotherinlaw Radhey Shyam and Ram Autar brotherinlaw of Chhedi were talking. Ramzan enquired from Smt. Gulaba Devi, whereabouts of complainant Kulli. Smt. Gulaba stated that he is not present.

5. In the meantime, elder brother of complainant Chhedi Yadav came out of his house, then on instigation of Ramzan, they started fire. His brother Chhedi Yadav fell down infront of house. The incident was seen by the complainant, his wife, his sisterinlaw and Ram Autar (brotherinlaw) of deceased Chhedi Yadav and Radhey Shyam (brotherinlaw) of the complainant.

6. Report was lodged by Amarnath @ Kulli on next date i.e. 29/7/78 at 11.45 a.m.

7. After investigation, charge sheet was submitted against the appellants Abdul Hadi, Dost Mohammad, Ibne Hasan. Ramzan and Akbar. Regarding accused Ruaab, it was mentioned in the charge sheet that a supplementary charge sheet would be submitted against him.

8. Appellants Abdul Hadi, Dost Mohammad, Ebne Hasan, Ramzan and Akbar were committed to stand their trial under Sections 147, 148 and 302 read with Section 149 IPC by Sri R.K. Gupta, the then Chief Judicial Magistrate, Fatehpur on 12/12/80.

9. Appellants were charged under Sections 148 and 302 read with Section 149 IPC by Sri K.K. Srivastava, the then IV Addl. Sessions Judge, Fatehpur vide his order dated 30/5/81. They pleaded not guilty and claimed to be tried.

10. The prosecution examined P.W. 1 Smt. Gyanwati, wife of the deceased Chhedi. She was declared hostile by the prosecution.

11. The prosecution examined eye witnesses P.W. 2 Smt. Gulaba Devi w/o Amarnath alias Kulli complainant, P.W. 3 Ram Autar brotherinlaw of the deceased, P.W. 4 Dr. J.S. Rai, who conducted the autopsy of deceased Chhedi, P.W. 5 Constable Ram Chandra Singh, who brought the dead body of deceased Chhedi alongwith village Chaukidar Kallu of village Mohammadpur Gauti on 29/1/78 to the mortuary Fatehpur and identified the dead body and deposed that the seal was intact. P.W. 6 Constable Chetram, prepared chik F.I.R. Ex. Ka 2 on 29/7/78 at 11.45 a.m. on the basis of the written report of Amarnath alias Kulli and made entry in the G.D. at Rapat No. 11 and proved Ext. Ka 2 and Ka 3. He also deposed that on 30/1/78 at 9.10 a.m. constable No. 27 Dharma Raj Singh and constable No. 70 Ram Autar brought four sealed bundles alongwith specimen of seal regarding which, entry was made by him in the G.D. at Rapat No. 10. He proved copy of the G.D. Ext. Ka. 4.

12. Prosecution also examined P.W. 7, Waliullah, who deposed that, on the dictation of Amarnath alias Kulli on 29/1/78 he wrote the written report. He does not remember whether Amarnath has put his signature on the written report or not. He cannot say whether the written report bears the signature of Amarnath

or not and after scribing the written report he handed over the report to Amarnath. He wrote what was dictated by Amarnath alias Kulli.

13. Heard Sri I.M. Khan, learned counsel for the appellants and learned A.G.A. and perused the record.

14. It has been argued by the learned counsel for the accused appellants that F.I.R. is ante timed.

15. According to the prosecution case incident took place on 19/7/78 at about 6.30 p.m. while the report was lodged on 29/7/78 at 11.45 a.m. The statement of Smt. Gulaba, wife of the complainant Amarnath alias Kulli, who deposed that report was prepared at 2 p.m. at her house and was dictated by her husband at her house.

16. Argument of the accused appellants is that, it shows that F.I.R. was ante timed. When the report was dictated at 2 p.m., there was no question of lodging the F.I.R. at 11.45 a.m.

17. It has also been argued by the accused appellant that report was lodged in consultation with the police.

18. In this connection, attention of the Court has been drawn towards the statement of Smt. Gulaba, who has deposed that on the dictation of her husband at 2 p.m. Darogaji prepared the report.

19. In this connection, attention of the Court has also been drawn towards the statement of Waliullah, scribe of the report, who deposed that, report was prepared on 29/7/78 at old police out post of his village; and report was prepared by him in presence of Darogaji and police personnels and he wrote, what was dictated by Darogaji and Amarnath alias Kulli.

20. It has been argued by the accused appellants that the time of occurrence is also doubtful.

21. In this connection, attention of the Court has also been drawn towards the statement of Dr. J.S. Rai, P.W. 4. In the cross-examination Doctor has deposed that the death is possible on 19/7/78 at about 10 p.m. According to the post mortem report, semi digested food in the stomach was present.

22. The argument of the accused appellants is that there was no question of presence of semi digested food in the stomach at 6.30 p.m. The presence of semi digested food in the stomach proved that the death might have taken place at 10 p.m.

23. Argument of the accused appellants is that the contention is further supported by the fact that according to the prosecution case, occurrence took place at 6.30 p.m. while the distance between the place of occurrence and police station is only six miles. Had the incident taken place at 6.30 p.m. as alleged by the prosecution, then the report could have been lodged in the night, but

according to the prosecution, report was lodged on 29/1/78 at 11.45 a.m. It also shows that incident took place near about 10 p.m., therefore, report was not lodged in the night.

24. It has also been argued by the accused/appellants that Smt. Gyanwati wife of deceased Chhedi did not support the prosecution case. She deposed that, when she reached on the spot, she found that accused had ran away after killing her husband.

25. It has been argued by the accused appellants that, there was no motive for the accused to kill the deceased Chhedi, as according to the prosecution case, Ramzan kept Smt. Tulsi sister of the complainant and there was interval of 18 years in between the incident of keeping Smt. Tulsi as his wife by force, while there was motive for false implication of accused/appellants by the complainant.

26. In this connection, attention of the Court has also been drawn towards the statement of Smt. Gyanwati, who deposed that Amarnath alias Kulli (complainant) was annoyed with the accused Ramzan, who kept Tulsi sister of the complainant as his wife.

27. In this connection, attention of the Court has also been drawn towards the statement of Smt. Gulaba, wife of the complainant, who deposed that her husband and one Nabiullah belonged to one party. There was enmity between Nabiullah and accused Ramzan and her husband used to go and also used to reside with him. He used to carry gun of Nabiullah.

28. In this connection, attention of the Court has also been drawn towards the fact that, Smt. Gulaba deposed that, before the incident, her fatherinlaw Ram Dhani lodged a report against accused Ramzan and father of Dost Mohammad Ali Raza regarding dacoity and murder.

29. Argument of the accused appellant is that as accused has no motive, no occasion for committing murder arose.

30. In this connection, attention of the Court has also been drawn towards the fact that Smt. Gyanwati wife of deceased Chhedi has deposed that, complainant Amarnath alias Kulli was of bad character and it has been deposed by her and Smt. Gulaba that complainant and his family members were annoyed with Ramzan. Therefore, person like Amarnath alias Kulli, who is of bad character, falsely implicated the accused due to annoyance.

31. It has also been argued that, written report has not been proved, because Amarnath alias Kulli has not been examined and Waliullah scribe of the report has deposed that he does not remember, whether Amarnath put his signature on the written report in his presence or not. He cannot say, whether report bears the signature of Amarnath.

32. Argument of the learned counsel for the accused appellants is that, in view of the statement of Smt. Gulaba possibility of the presence of accused Ibne, Dost

Mohammad and Hadi is ruled out.

33. In this connection, attention of the Court has also been drawn towards the statement of Smt. Gulaba wife of the complainant, who admitted in her statement that she recognized accused Ramzan and Akbar by names and by face. She cannot tell the name of other accused. The names of accused Ibne, Ahai and Dost Mohammad were informed by her husband at the time of preparation of report. As she does not recognize accused Dost Mohammad, Hadi and Ibne by face, then she cannot say whether other accused besides Ramzan and Akbar were present at the time of incident or not.

34. It has also been argued by the learned counsel for the appellant that regarding the manner of the occurrence, there is contradiction in the F.I.R. and in the statement of the witnesses. According to the F.I.R. accused Ramzan enquired from the wife of the complainant regarding whereabouts of Amarnath @ Kulli, who stated that he is not here, in the meantime Chhedi came out of the house. Ramzan instigated to kill Chhedi. Chhedi ran away towards the house of Parsan Yadav. Ramzan Ruab and others started fire and after receiving injuries Chhedi fell down on earth.

35. According to the Smt. Gulaba's statement deceased Chhedi, who was inside the house climbed over Atari, then accused Dost Mohammad, Ramzan, Akbar went over Atari through stair case and they fired upon deceased Chhedi at the Atari and due to fire injuries, he fell down in front of the house of Parsan. Same has been deposed by Ram Autar brother-in-law of the deceased.

36. Argument of the accused appellants is that, according to F.I.R. incident took place near the house Parsan Yadav at ground floor, while, according to the statement of Smt. Gulaba and Ram Autar, incident took place over Atari.

37. In this connection, attention of the Court has also been drawn towards the fact that, according to Smt. Gulaba accused went over the Atari through stair case, while according to the statement of Ram Autar, four accused Akbar, Dost Mohammad, Ramzan and Ibne went on the Kotha through back portion, as alleged by him in his examination in Chief, while in the cross-examination he deposed that accused went to the Atari through Darwar (wall).

38. It has also been argued that witness Ram Autar, who is brother in law of deceased Chhedi has admitted that, his house is at a distance of 20 kms away from the place of occurrence. He is a chance witness. He has admitted that his eye is defective. Therefore, no reliance can be placed on the statement of Ram Autar.

39. It has also been argued by the accused/appellants that Atari, from which four accused fired on the deceased Chhedi, but according to the statements of Smt. Gulaba and Ram Autar has not been shown in the site plan by the Investigating Officer.

40. Considering the total circumstances, we are of the view that appeal is liable

to be allowed and accused appellants are entitled to be acquitted.

41. Both Appeals are allowed and the judgment and order dated 21121981 convicting and sentencing the accused appellants are set aside. They are acquitted. They are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender their bonds.