
(1996) 04 AHC CK 0113
In the Allahabad High Court
Case No : Criminal Appeal No. 754 of 1980

Roshan Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (1997) CriLJ 256

Hon'ble Judges : R.N. Ray, J;N.L. Ganguly, J

Bench : Division Bench

Advocate : N.C. Upadhyayu, Pankaj Mittal and Dilip Kumar, for the Appellant;
Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Ray, J.—This appeal has been preferred against the judgment and order of sentence passed by Sri. S. P. Agarwal, learned V. Addl. Sessions Judge at Meerut in Session Trial No. 89 of 1978 which arose out of crime No. 688/77 P. S. Delhi Gate district Merrut.

2. The prosecution story in brief is that one Smt. Chanda Devi (deceased), wife of S.I. Bankat Singh who at the relevant period was posted at Police Station Pilana, was living in a rented room situated in mohalla Indrapuri owned by accused Roshan Singh. The said Chanda Devi was living alone in that room. The portion of the house in possession of Roshan Singh and his family was inadequate so Roshan Singh was in great need for the space occupied by Suit. Chanda Devi and he insisted her to vacate the same. The said Roshan Singh had Aata Chakki in some portion of his house and whenever Bankat Singh used to visit Suit. Chanda Devi, Roshan Singh insisted him to vacate that room. On 25- J 2-77 at about 3.15 p.m. the deceased Smt. Chanda Devi was alone in her house and accused Roshan Singh asked her to vacate the room at once and started throwing her house- hold articles.

Deceased Chanda Devi put resistance. But Roshan Singh did not pay any heed to her resistance and went on throwing her house hold articles then Smt. Chanda Devi gave a patri blow on the head of Roshan Singh. He got flared up, being assaulted had gone inside the house, brought a knife from his room and caught hold of Smt. Chanda Devi in one hand and when she was trying to get herself free and run away to save herself then Roshan Singh gave knife-blows on the vital part of her body. In the meantime Sahdeo Sharma hearing the noise and abuses which are being exchanged between Smt. Chanda Devi and Roshan Singh went to the roof of his house and saw the incident. He also raised alarm and asked Roshan Singh not to assault Chanda Devi. The alarm and noise attracted Dharambir, Madhu and Kishan Lal and they all came there and saw the incident and tried to apprehend the accused Roshan Singh but on showing the knife Roshan Singh threatened them and managed to escape from that place. Sri Sahdeo Sharma along with Kishan Lal and Dharambir Agarwal took Smt. Chanda Devi to the hospital by rickshaw but the doctor of the hospital examined the said Chanda Devi and declared her dead. Then Sahdeo Sharma went to the Police Station and lodged the F.I.R. He was examined by the I.O. and then he came back.

3. The further case of the prosecution is that S.I. Bankat Singh was given information about Chanda Devi's death, who came and took the delivery of the deadbody, after post mortem examination. P.W. 2, Sahdeo Sharma and others took the deceased Chanda Devi to the cremation ground and cremated the dead-body of Chanda Devi.

4. The investigation was entrusted to S.I. R. P. Verma and he was successful in arresting Roshan Singh on the same day ,at about 6.45 p.m. near Delhi Chungi Office in presence of Ram Charan and Kesho Ram. The accused made statements before the I.O. in presence of the witnesses Ram Charan and Kesho Ram and as per showing by Sri Roshan Singh a knife was recovered from the compound of a nearby house. The I.O. seized that knife being recovered on pointing out by the accused and he sealed the same which appeared to be blood-stained. I.O. packed the same and that was sent for chemical examination by constable with a forwarding letter. The I.O. examined the prosecution witnesses and recorded their statements u/s 161 Cr.P.C. and after complying other formalities submitted the charge sheet against the accused u/s 302 I.P.C.

5. The defence did not examine any witness but challenged the prosecution case as concocted case. From the statements made by the accused during the examination u/s 313 Cr. P.C. it appeared that the defence taken by him was that Chanda Devi was only a concubine of S.I. Bankat Singh who took that room on rent from accused Roshan Singh describing Smt. Chanda Devi as his wife. Men of easy virtues used to visit Chanda Devi. On that day at about 3.15 p.m. a person of doubtful character visited Chanda Devi which was disapproved by the accused, caused great annoyance to Chanda Devi and she assaulted him with patri by showering abuses. The accused Roshan Singh being hit by patri on his head fell

down and the aid Chanda Devi was about to give further blows to the accused then Smt. Jaisree, wife of the accused, who was cutting vegetables nearby just came at the place of occurrence caught hold of Chanda Devi and to save her husband she caused knife injuries to Chanda Devi. The accused went to police chowki and alleged the incident to the police and he was made to sit at the police Chowki and then Darogaji came there and his wife was also arrested and they were taken to the police station. S. I. Bankat Singh was called through wireless message and F.I.R. was made on the next day at about 10.00 a.m. At the instance of S.I. Bankat Singh Smt. Jaisree was allowed to go away and Roshan Singh had been falsely implicated on a fabricated story.

6. The prosecution examined Sahdeo Sharma (P.W.2) Bal Mukund (P.W.3) and Dharambir Agarwal (P.W.4) as eye-witnesses to the occurrence. They stated that Chanda Devi assaulted Roshan Singh by Patri and thereafter Roshan Singh assaulted Chanda Devi by a knife which caused the death of Chanda Devi. P.W.2, Sahdeo Sharma, proved the written report Ext. Ka-2 which was lodged at the police station Delhi Gate on the same day at about 4.45 p.m. He also stated on oath that material Ext. 1 i.e. Patri was used by Chanda Devi in assaulting the accused Roshan Singh which was later on seized by Darogaji and given to him in superdgi. It was seized under a seizure-memo which was proved and marked as Ext. Ka. 3.

7. Dr. J. N. Goel was Medical Officer at P. L. Sharma Hospital, Meerut, who was examined as P.W. I. He conducted post mortem examination of the dead-body of Smt. Chanda Devi at about 3.30 p.m. on 26-12-77. The said dead body was identified by the police constable. He found one punctured wound, four incised wound and one abrasion on the dead body of the deceased and according to him " injuries No. 1 and 5 in ordinary course were sufficient to cause death and Chanda Devi had died due to shock and haemorrhage out of ante mortem injuries. The deceased was about 35 years old and was of average built. According to the doctor the death might have taken place at about 3.15 p.m. on 25-12-77 and those wounds could be caused by a knife.

8. P.W. 5 Kesho Ram is the witness of discovery of the knife, material Ext. 2 at the instance of accused Roshan Singh from the compound of Bhagwat Prasad situated in mohalla Indra Nagar in the evening of 25-12-77 just after this alleged incident. He also proved Ext. Ka. 4 i.e. seizure-memo by which the said knife, as discovered at the instance of the accused, was seized. He also stated that he was present when the accused Roshan Singh was arrested by Darogaji. P.W. 6 Ram Kumar, constable posted at Chowki Delhi Gate, stated that at about 8,30 a.m. on 26-12-77 the dead body of Chanda Devi was entrusted to him and constable Karan Singh in sealed condition and they took the dead body to the mortuary for post mortem examination.

9. P.W. 9 Sindhu Prakash constable, posted at Delhi Gate, stated that Sahdeo Sharma lodged the F.I.R. Ext. Ka-2 at P.S. Delhi Gate at 4.45 p.m. on 25-12-77. This witness prepared the check report Ext. K.a-12. On the basis of the said

report he prepared the crime registration G.D. Ext. Ka-13. He further stated that on the same evening at about 8.45 p.m. Sri. R. P. Verma I.O. brought accused Roshan Singh under arrest with one sealed bundle to the police station. The accused was put inside lock-up and the bundle was deposited in the police station which is Ext. Ka. 14. On 26-12-77 constables Ram Kumar and Karan Singh brought a sealed bundle containing clothes of the deceased at 4.30 p.m. and deposited the same in the police station which is Ext. Ka-15. On the same day at 6.15 p.m. the I.O. R. P. Verma deposited two containers containing blood stained and simple earth with reference to the G. D. entry Ext. Ka-16. This witness further stated that on 27-1-78 the aforesaid bundles were sent in sealed condition to the Sadar Malkhana through constable Devi Chand which is Ext. Ka-17.

10. P.W. 8 Sish Ram was S. I. of Sadar Malkhanaincharge in January and February 1978. He stated that on 27-1 -78 constable Devi Chand of P.W. Delhi Gate deposited 4 bundles in sealed condition in Sadar Malkhana. Those bundles containing a knife, blood stained and ordinary earth and the clothes of the deceased. He" has further stated that all those bundles along with petticoat were taken by constable Giriraj on 8-2-78 from the Sadar Malkhana to P. L. Sharma Hospital for chemical examination. Constable Giriraj Singh had sworn affidavit Ext. Ka-19 to the effect that on 8-2-78 he brought 3 sealed bundles concerning this case from Sadar Malkhana to P. L. Sharma Hospital for being dispatched to Agra for chemical examination. He further stated that he had also taken the letter of A.D.M. along with these bundles and till that time those bundles were in intact condition with seals. Tanvirul Haque clerk of C.M.O., Meerut, has sworn affidavit Ext. Ka. 18 to the effect that the three bundles convening the ease were brought by constable Giriraj Singh from Sadar Malkhana along with the letter of Chief Judicial Magistrate to the office of G.M.O. with seals in proper condition and those bundles were thereafter sent from the office of the C.M.O. to the medico-legal cell for chemical examination to Agra by Rail. He further stated that till that time the bundles were in intact condition and nobody was allowed to touch the same.

11. P.W. 7 R. P. Verma I.O. stated that he recorded the statements of Sahdeo Sharma and Head Moharrir Sindhu Prakash at the Police Station on 25-12-77. After summoning constables Ram Kumar and Karan Singh from outpost Delhi Gate he left to P.L. Sharma Hospital along with the aforesaid constables and S. I. Rajendra Singh and Tara Chand. When he was just coming out of the police station the informant met hi m and told him that accused Roshan Singh was seen at Delhi Chungi barrier and it appeared that the accused Roshan Singh was trying to move out of from that police station. On receiving this information the I.O. rushed to Delhi Chungi barrier along with the informant and on his pointing out he arrested the accused Roshan Singh in presence of the witnesses Kesho Ram and Ram Charan. He also stated on oath that on interrogation Roshan Singh told this witness in presence of other witnesses that the weapon which used in assaulting Smt. Chanda Devi had been thrown by him in the compound of

Bhagwat Prasad and he could bring the same if he was allowed to go there. The accused, I.O. and other witnesses went to the compound of Bhagwat Prasad situated in mohalla Indra Nagar (Indrapuri) in front of Poultry house and from inside of the compound the accused took out a Chhura, i.e. material Ext. 2 from the eastern-southern corner of that compound. That Chhura appeared to be bloodstained. He prepared seizer-memo in presence of the witnesses and seized the "Chhura" and packed the same in sealed cover. Thereafter the I. O. went to P. L. Sharma Hospital but he could not hold inquest for want of sufficient light and the constables were left there for the protection of the dead-body. On 26-12-77 the I.O. prepared the inquest report of the dead body of Chanda Devi. He also prepared Khakanash Ext. Ka-7 and Chalannash Ext. Ka-8 and entrusted the dead-body of Chanda Devi to constables Ram Kumar and Karan Singh under sealed cover for post-mortem examination along with necessary documents. Thereafter the I.O. went to the place of occurrence and recorded the statements of the witnesses and prepared site plan of the spot which is marked Ext. Ka. 9. He further stated that it was learnt that in front of the room Roshan Singh, Chanda Devi was admittedly residing there; before her death and her house hold effects were found scattered. Patri Ext. 1 was picked up by Shadeo Singh Sharma saying that Chanda Devi had caused injuries to Roshan Singh with that Patri. 2.0 seized that patri under seizure memo in presence of the witnesses. He also took some blood-stained and ordinary earth from the spot and sealed them in separate bundle. The I.O. recorded the statements of S.I. Bankat Singh and also prepared a report for sending the aforesaid articles for chemical examination but as he went on long-leave on 30-12-77 he could not complete the investigation.

12. As S. I. R. P. Verma went on long-leave the investigation was entrusted to S. I. Tule Ram who completed the investigation and submitted charge-sheet against the accused Roshan Singh on 13-2-78. The chemical examination report has been marked as Ext. Ka-21. As per this report Chhura and the clothes of the deceased were found having human blood-stains. Sale-deed, 47 Ka, was also filed by the prosecution to show that Chanda Devi was the wife of S. I. Bankat Singh. The defence examined two witnesses. D.W.I Smt. Jaishree the wife of the accused Roshan Singh. She had narrated the defence version as described above. She stated on oath that she caused knife injury to Chanda Devi for the defence of her husband when Chanda Devi after having caused one patri blow to Roshan Singh was trying to give another patri blow to Roshan Singh on his falling on the ground. She has also stated that men of bad characters used to visit Chanda Devi and she and her husband asked her not to allow these persons to visit her house. On this abuses had been exchanged and "marpit" took place as alleged.

13. D.W. 2 is Dr. Dharambir Jindal, Medical Officer, P. L. Sharma Hospital, Meerut. He conducted the medical examination of Roshan Singh accused, brought by constable Aidal Singh of P. S. Delhi Gate at 9.30 p.m. on 25-12-77. He found two lacerated wounds on the left side of the head. According to the doctor both the

injuries were simple, fresh which were caused by blunt object. The doctor further opined that both these injuries could have been caused at about 3.30 p.m. on 25-12-77. The injury report was marked as Ext. Ka-2.

14. D.W. 3 is Prahlad Singh. He was constable-moharrir of P. S. Pilana. He stated that in the G. D. of P. S. Pilana, marked Ext. Kha-3, related to departure of S. I. Bankat Singh at 8.10 p.m. on 25-12-77. This witness further stated that after the departure of S. I. Bankal Singh his return at the police station Pilana was recorded in the G. D. of 29-12-77 at 15.30 p.m. This G. D. is Ext. Kha-4. The parties made oral submission and also filed written arguments.

15. All the three eye witnesses Sahdeo Sharma, Balmukund and Dharamvir Agarwal had slated on oath that Roshan Singh i.e. the accused-appellant caused those injuries on Chanda Devi with a "Chhura" with an intention to kill her. P.W. 2 Sahdeo Sharma stated that at the adjoining house of Roshan Singh his house is situated on the south which is corroborated from the statements of D.W. 1 Smt. Jaishree. Both the witnesses stated that at the time of occurrence noise took place at the house of Roshan Singh. It is admitted that Roshan Singh was asking Chanda Devi to vacate his house and Chanda Devi was adamant not to vacate it, that resulted in hot altercation between Chanda Devi and Roshan Singh and as such there was much noise. It is also admitted that Chanda Devi attacked Roshan Singh with the patri. According to P.W. 2 Sahdeo Sharma, he heard the noise and went on the roof of his house and saw the aforesaid occurrence. It is also evidenced on oath that there is no stair case going to the roof of the house and there is no evidence that any ladder was fixed to go to that roof. It is assumed that P.W. 2 Sahdeo Sharma actually was on the roof and heard the noise and he forbade Roshan Singh not to further assault Chanda Devi, thereafter he came down and went to the house of Roshan Singh, where he found other witnesses Bal mukund and Dharamvir Agarwal. From the site-plan it appeared that he got down from his roof and covered a distance of about 150 paces to reach the spot and it becomes very difficult to believe that Roshan Singh would be there for such a period because for inflicting those injuries hardly 1 and 2 minutes time would be necessary. This P.W.2 claimed that he saw the occurrence of inflicting knife injuries on Chandadevi by Roshan Singh. According to him he raised alarm and that attracted P.W. 3 Bal Mukund and P.W.4 Dharambir Agarwal to come on the spot. If he actually raised an alarm when Roshan Singh started inflicting injuries on the person of Chanda Devi and thereafter those witnesses on hearing the alarm came there then that must have taken a few minutes for P.W. 3 and P.W.4 to reach near the place of occurrence. It becomes doubtful that they would come and see the occurrence as claimed by them.

16. As per P.W.2 Sahdeo Sharma, besides his daughter being 14-15 years in age, three other persons namely Ram Niwas Sharma, Ram Niwas and Randhir Singh also reside with him in that house. According to him other male members of his family were not present at that time and only female inmates were present in the

house. The reasons assigned by the learned Court below that the occurrence might not be seen by women folk may be cogent. According to P.W.4 Dharamvir Agarwal on that very day, he did not go to his duty and his duty starts by 4.00 p.m. According to this witness he heard the noise of P.W.2 Sahdeo Sharma while he was in Chowk. From the statement of Balmukund P.W. 3 it is learnt that on that fateful day he was coming back to his house on his bullock thela from Delhi Chungi barrier. He further stated that he was parking the bullock thela through the plot lying vacant in between the house of Roshan Singh and Delhi Chungi barrier. This witness stated that he was coming earlier on that day as there was dearth of work for X'mas festival and all these witnesses P.W.3 and P.W.4 on hearing the alarm of P.W.2 Sahdeo Sharma rushed to the spot. P.W.2 Sahdeo Sharma actually started shouting when Roshan Singh went to inflict injury on the person of Chanda Devi and caught hold the hands of Chanda Devi and inflicted 5 Knife injuries. Certainly the whole process of inflicting injuries hardly had taken a minute or two and if actually other persons came there on hearing his alarm at least 2/3 minutes since then so they were not expected to see the actual inflicting injuries on the person of Chanda Devi. P.W. 2 found Roshan Singh hitting knife injuries on Chanda Devi and then came down from the roof, covered at least 150 paces which certainly consumed some time as there was no staircase leading to the roof of his house. So, it appears doubtful as to whether he actually saw the incident as narrated by him.

17. It has been evidenced that Smt. Jaishree was present near the spot and she was cutting vegetable with a knife when Chanda Devi actually inflicted injuries on the head of Roshan Singh. It was natural on her part to be aggressor in defence of her husband. In some of the documents which were marked exhibits the case number was not noted by the I.O. when in others it was noted. This anomaly raises a suspicion as to whether F.I.R. was actually made at that time as appeared from the copy of the F.I.R. or it was ante timed as claimed by the defence. Chanda Devi was the wife or concubine, as the case may be, of S.I. Bankat Singh and he was holding the post of S.O. at the nearby police station and it was not difficult on his part to play some role to model the investigation in a fashion as desired by him. The fact of coming of S. I. Bankat Singh shortly after the occurrence and the fact that in some of the prosecution papers the case number was not noted if be taken into account with the defence case then a reasonable doubt raises in our mind as to whether the F.I.R. was lodged at the very date and lime as appeared in the F.I.R. or it was ante-timed. Whenever doubt arise that should go in favour of the accused. It is more difficult to believe that Roshan Singh would wait so long near the police out-post only to get him arrested though had sufficient time in the meantime to move out from that place.

18. In view of the above discussion we are inclined to hold that F.I.R. was ante-timed and it was prepared in consultation with S. I. Bankat Singh after his arrival at police station Delhi Gate district Meerut. When the F.I.R. itself has become doubtful and which is alleged to have been lodged by the eye witness in that event the whole prosecution case fell down and it becomes very unsafe to rely

upon the prosecution story to award conviction. In this connection it has been placed reliance upon a decision of Hon"ble Supreme Court reported in AIR 1956 SC 441 Ram Shanker Singh v. State of U.P. At least a reasonable doubt appears regarding truthfulness of the prosecution witnesses. In view of our discussions made above we think that the accused be entitled to get the benefit of doubt.

19. Accordingly it is ordered that the judgment and order of sentence passed by the learned Court below are hereby set aside. The accused is acquitted of the charges as levelled against him in S.T. No. 89/ 78 which arose out of crime No. 688/77 of police station Delhi Gate district Meerut. Sureties are discharged from the bail bonds. The exhibits and other materials be disposed of according to rules.

N. L. Ganguly, J.

20. I agree.