
(1978) 07 AHC CK 0032
In the Allahabad High Court
Case No : Criminal Appeal No. 1866 of 1978

Shiva Sahai and Ors.

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 24-07-1978

Acts Referred:

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 148, 149, 201, 302

Citation : (1978) 07 AHC CK 0032

Hon'ble Judges : H.C.Mittal, J and M.M.Lal, J

Judgement

M. M. Lal, J.

1. This is an appeal against a judgment and order dated 16/6/1978 passed by Sri J. N. Bansal, the then 1st. Additional Distt. & Sessions Judge, Bulandshahr, by which he has convicted the above named five appellants under Section 148, 201 and 302/149, I. P. C. and has sentenced each of them to undergo rigorous imprisonment for 2 years, 3 years and life imprisonment respectively thereunder,

2. According to the case of the prosecution, on the evening of 19/2/77 Ilyas deceased had spotted Gyani appellant cutting his mustard crop with a view to steal it. When Ilyas deceased raised objection, Gyani appellant abused him. Subsequently on the same day in the evening all the five appellants came to the field and told Ilyas deceased that he was considering high of himself and that he would be taught a lesson.

6. It is further the case of the prosecution that on the night of 19/20 February, 1977, at about midnight, when Ilyas deceased was sleeping at his tube well, Saw Sahai appellant armed with a gun, Gyani appellant carrying a spear remaining three appellants armed with "Balkati" came there. There was a shriek of Ilyas deceased, which attracted the attention of Mohd. Hamid informant and other witnesses, who were present at a nearby crusher. These persons proceeded towards the aforesaid tube well of Ilyas deceased. However, in the way they heard cries of Ilyas deceased coming from a nearby rivulet on which

these witnesses proceeded towards to said rivulet. When they reached nearby they saw the appellants, carrying the aforesaid weapons, going towards southern side. These witnesses searched the rivulet and found the deadbody of Ilyas deceased lying therein. They took out the deadbody and placed it on the bank of the rivulet. In the morning Mohd. Hamid informant, who was nephew of the Ilyas deceased, went to P. S. Chandpur, situate at a distance of 11 Kms,, Where he lodged the report of the incident on the said date at 11.30 a. m,

4. In order to prove its case the prosecution examined P.W. 1 Mohd. Hamid informant, P.W. 2 Ahmad Hasan, P.W. 3 Akhiaq Ahtnad Khan and P.W. 5 Alamgir, who gave the circumstantial evidence against the appellants. P.W. 6 Ishwar Singh had taken the dead body for the post mortem examination P.W. 7 Rohtash Singh was the head Moharrir, who had registered the case. P.W, 8 Tara Chand S. I. had prepared the inquest report. The investigation of this case was conducted by P.W. 9 Peetam Singh.

5. The post mortem examination of the deadbody of Ilyas deceased was made by P.W. 4 Dr. D. B. Singh, the then Medical Officer, District Hospital, Bulandshahr on 2121977 at 4 p. m. He had found the following antemortem injuries on the deadbody of Ilyas :

(1) Incised wound 5x ?x partially left occipital bone cut on left side . head just below left ear.

(2) Incised wound 4x ?x bone on left temple cutting the left ear pine through and through in its middle.

(3) Incised would 8x2x bone cut partially on left side face extending to left side back of head passing below left ear, left side mandible

and left occipital bones cut partially underneath.

(4) Incised wound 5?x 1?X muscle on left side neck upper part cutting the left side major blood vessels the carotid and jugular vessel, 1 below injury No. 3.

(5) Incised wound 6?x1X bone cut partially (Mandible right side at the angle) extending from right side nose crossing the right check to right side neck at the angle of right mandible.

(6) Vertical incised wound 5x? X muscle on left side nose.

(7) Incised would 1?x? x tip of nose cut through and through.

(8) Incised would 1?xx right side lower lip cut through and through.

(9) Incised would 1? X ? x abdominal cavity on left side abdoman I away from umbiicus 3"O clock position. Intestinal loop out of wound.

(10) Incised wound 1? X ? subcutaneous tissue on back of left hand.

(11) Multiple abraded contusions all over front of chest measuring smallest ?X?X

and biggest 2x2".

(12) Abrasion 1 x 1 on outer aspect left knee.

6. According to the doctor the death of Ilyas deceased had occurred due to shock and haemorrhage as a result of aforesaid injuries at about the time of the incident.

7. The appellants in their statements denied the case of the prosecution and stated that they had been falsely implicated in this case due to enmity.

8. Learned Sessions Judge has believed the case set up and the evidence produced by the prosecution and has accordingly convicted and sentenced the appellants as aforesaid. Aggrieved by the same the appellants have filed this appeal.

9. We have heard learned counsel for the appellants and the Government Advocate and have perused the record carefully.

10. This is a case of circumstantial evidence. The main circumstance on which the prosecution relies for establishing the guilt of the appellants is that when P.W. 1 Mohd. Hamid informant, P.W. 2 Ahmad Hasan, P.W. 3 Akhlaq Ahmad Khan and P.W. 5 Alamgir had gone towards the aforesaid rivulet on hearing the cries of Ilyas deceased, they had seen the appellants coming from the side of the said rivulet. Learned Government Advocate has urged before us that when the appellants in the deed of the night were found carrying deadly weapons and were seen coming from the side of the aforesaid rivulet from where ultimately the deadbody of Ilyas deceased was recovered, the said circumstances abundantly show that the murder of Ilyas was committed by the appellants and none else. We find no merit in the said argument because we have not been impressed with the evidence given by the aforesaid witnesses and are not prepared to rely on them.

11. The topography of the place of occurrence has been vividly shown by the Investigating Officer in the site plan prepared by him. As may be seen from the said site plan, the aforesaid crusher, where the witnesses were said to have been present, was situate at a distance of three furlongs from the tubewell of Ilyas deceased in the west. From the tubewell the rivulet, where the deadbody of Ilyas was recovered, was situate at a distance of about one mile. The aforesaid witnesses have tried to give evidence that the first cry of Ilyas deceased was heard by them from the aforesaid tubewell, when they proceeded towards the said tubewell. It may be noted that out of these four witnesses P.W. 1 Mohd. Hamid informant was the nephew of Ilyas deceased, P.W. 3 Akhlaq Ahmad Khan and P.W. 5 Alamgir were the real brothers of Ilyas deceased, k it was a fact that they had heard the cries of Ilyas deceased from the aforesaid tube veil these persons must have proceeded towards that place swiftly. However, these witnesses stated that before they could reach the tubewell they heard the cry of Ilyas deceased coming from the side of the aforesaid rivulent on which they

proceeded towards the said rivulet, but before they could reach they said rivulet they saw the assailants coming from the said rivulet. In order to reach the said rivulet the appellants had to cover a distance of one mile from the aforesaid tubewell. As against the same the informant and the remaining three witnesses could reach the said rivulet by covering a much shorter distance. In suit a situation the assailants would have been overtaken by the witnesses and it would not have been possible for the witnesses to reach later on after the assailants had committed the crime and started going away from the said rivulet. Anyway, whatever the position may be the witnesses examined by the prosecution in this case would not have seen the faces of the assailants in any view of the matter.

12. It has come on record that two of the witnesses were carrying torches, which were being flashed, and that one witness was carrying lantern, which was burning P.W. 1 Mohd. Hamid had stated in his evidence that there were seven persons who had left the crusher with a view to rescue Ilyas deceased and chase the assailants. In our view when as many as seven persons had set out in search of Ilyas and the assailants, and torches, etc. were being flashed at the site the assailants would not have been so senseless as to proceed towards the said persons so that they could see their faces and recognise them. The assailants would have obviously gone towards the opposite side, i.e. southern side, so that the witnesses could see their backs and not their faces. This position has been narrated by the informant himself in his F. I. R. He has stated in his F. I. R. that five appellants were seen running away towards south from the aforesaid rivulet. Thus, at the risk of the repetition, it may be stated that when the witnesses were coming to the aforesaid rivulet from the northern side and the assailants were running away towards south from the said rivulet, the said witnesses even at best could have seen the backs and not the faces of the appellants. The witnesses would have in no case recognised the assailants.

13. The witnesses otherwise too do not appear to be reliable. As already observed P. W. 1 Mohd. Hamid informant is the nephew and P.W. 3 Akhlaq Ahmad Khan and P.W. 5 Almgir are the real brothers of Ilyas deceased. The remaining witnesses P.W. 2 Ahmad Hasan is also not independent. He has admitted that his uncle Rafiq had contested the election for the office of village Pradhan against Shiv Sahai appellant, that he was a supporter of Rafiq and that Rafiq lost the said election. It is obvious from the same that this witness and his uncle Rafiq would have been aggrieved because election to the office of village Pradhan had been lost to Shiv Sahai appellant. Otherwise too, it may be observed that Ahmad Hasan P.W. 2 has stated in his evidence that in the night he had gone to the aforesaid crusher in order to eat Gur. It does not appear probable that a person would go to a crusher and remain present there in order to eat Gur at about mid night.

14. P.W. 2 Ahmed Hasan gave his evidence in a halting manner. At first he was sure and specific with regard to three appellants only and named them as Shiv Sahai, Nanhey and Nathihi, and with regard to the remaining two assailants he

deposed that he did not remember their names. Then he added that remaining person was Gyani appellant. Then he stated that all the five appellants were five accused in this case. Such an evidence cannot inspire confidence.

15. Akhlaq Ahmed Khan P.W. 3 stated in his evidence that Gyani appellant was armed with a gun. This is against the case of the prosecution and the evidence of the remaining witnesses according to which Gyani appellant was carrying a spear. Again, when this witness was cornered he stated that he did not remember as to who was carrying spear. He could not say as to how many witnesses were carrying spear. In this connection it may be observed that according to other witnesses they were carrying torches, lantern, etc. and that none of the witnesses was carrying any spear.

16. As regards P.W. 1 Mohd. Hamid he did not give any explanation in his F. I. R. as to how and why the said F.I.II, was lodged with delay. However, in his evidence he tried to depose that due to fear he had not gone to lodge the report of the incident immediately after the occurrence. When his brother P.W. 4 Akhlak Ahmad Khan was cross-examined on the said point he could not explain but kept mum as to why not any person had gone to lodge the report of the incident immediately after the sunrise. The F. I. R. in this case, therefore has lost its corroborative value.

17. In result, therefore, we are of the opinion that the aforesaid four witnesses examined in this case are neither independent nor reliable. Their evidence does not inspire confidence and cannot be believed. The prosecution has thus failed to prove that the said four witnesses on the aforesaid date and time had seen the appellants or any of them coming from the aforesaid rivulent, from where the deadbody of Iliyas was recovered. When the said circumstance is not established by the prosecution, the case against the appellants cannot be said to be made out.

18. Learned Government Advocate has urged before us that the prosecution had succeeded to prove the motive in this case. In this respect it may be observed that the prosecution had led evidence that on the evening of 9/11/1977 Gyani appellant was spotted by Iliyas deceased cutting his mustard crop and that when the deceased objected to the same Gyani appellant abused him. The prosecution further took a case that subsequently in the same evening all the five appellants had gone to the Iliyas deceased and had told him that he was considering high of himself land that he would be taught a lesson. In our opinion even if the said case of the prosecution is believed, it cannot be said that the appellants had a motive to commit the murder of Iliyas. When Gyani appellant had cut the mustard crop of Iliyas deceased and had caused loss to him then it would have been Iliyas deceased and his family members who would have been aggrieved with Gyani appellant and his companions and not otherwise.

19. To sum up, in a case of circumstantial evidence the facts to be established should be consistent only with the hypothesis of the guilt of the accused, that is

to say, they should not be explainable on any other hypothesis except that the accused is guilty. Also there must be chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocent of the accused and must show that in all human probability the act must have been done by the accused. In this case the prosecution has failed to discharge such a burden. We are thus of the view that the case of the prosecution was not made out against the appellants or any of them.

20. Accordingly, this appeal is allowed and the conviction and sentence of Shiv Sahai, Nanhey, Gyani, Naththi and Chhitar appellants under Section 148, 201 and 302/149, I.P.G. are set aside. They are held not guilty of the said offences.

21. The appellants are on bail. They need not surrender to their bail bonds, which hereby stand discharged.