
(2007) 07 AHC CK 0035
In the Allahabad High Court

Sripal and Chhotey Lal (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2007) 07 AHC CK 0035

Hon'ble Judges : S.K. Jain, J;K.S. Rakhra, J

Bench : Division Bench

Judgement

S.K. Jain, J.—This criminal appeal has been filed against the Judgment and order dated 31.8.1982, passed by learned Sessions Judge, Hamirpur in S.T. No. 47 of 1982 State v. Sripal and Chhote Lal u/s 302 read with Section 34 of the I.P.C. P.S. Sumerpur, district Hamirpur, whereby the two appellants namely, Sripal and Chhote Lal have been convicted u/s 302 read with Section 34 I.P.C. and sentenced to undergo imprisonment for life.

2. The essential facts leading to this appeal are as follows:

2.1 On 2.9.1981 at about 8.00 a.m. the first informant Raja Bhaiya Singh son of Charan Singh resident of Tehra, P.S. Sumerpur (PW1) along with his brother Raj Kunwar Singh alias Goolar Singh, Ram Pal Singh and Amar Singh were taking bath on the well of Shivalay temple. Appellant Sripal Yadav armed with "tamancha" and appellant Chhote Lal armed with Bhala came there. Chhote Lal exhorted Dushman Aj Mil Gaya Hai Jan Se Maro Sale Ko. On his exhortation appellant Sripal fired at the brother of the first informant Raj Kunwar Singh alias Goolar from his "tarnancha." Raj Kunwar Singh receded fire arm injuries on the right side of his body. When the informant and his companions raised alarm, the appellant lied away.

2.2 Raja Bhaiya, on a tractor, proceeded with his injured brother to Hamirpur Hospital but his brother Raj Kunwar Singh alias Goolar succumbed to his injuries in the way to the Hospital, where he was declared dead.

2.3 The first informant got scribed the written report Ext. Ka-5 by one Bardani Singh and submitted the same at P.S. Kotwali, Hamipur on 2.9.1981 at 9.30 a.m. On the basis of this written report chick FIR Ext. Ka-9 was prepared by Head Constable Kali Charan (PW 7). The crime was registered at serial No. 14 in G.D. by him. G.D. entry is Ext. Ka-10 on the record. As he case crime related to P.S. Sumerpur, Chick F.I.R. as per G.D. No. 18 Ext. Ka-11, chick F.I.R. with written report was remitted to P.S. Sumerpur.

2.4 The inquest on the dead body of the deceased Raj Kunwar Singh alias Goolar was conducted in District Hospital Hamipur by SI Devendra Nath Chaturvedi (PW 5) after appointing Panch. The inquest memo Ext. Ka-5 IS on the record. After preparing the necessary papers for post mortem the dead body was sent to District Hospital Hamirpur for post mortem in sealed state through the constables. The autopsy on the dead body of Raj Kunwar Singh alias Goolar was conducted by Dr. V.K. Nigarm (PW 6) on 2.9.1981 at 3.45 p.m. who prepared the post mortem report Ext. Ka-8. The following ante mortem injuries were found on the person of the deceased.

(1) Multiple gun shot wound of entry in an area of 28 cm x 30 cm on right side of chest from mid line of the chest to posterior axillary line and from 2 cm below the right clavicle to 17 cm below the nipple including axillary each wound measuring 0.3 cm x 0.3 cm x chest cavity deep. Twenty wounds are muscle deep only. Margins are inverted. No blackening or scorching seen. Total wounds are 160.

(2) Three gun shot wounds of entry on the medial border of right upper arm in an area of 5 cm x 1.5 cm, each wound is 0.3 cm x 0.3 cm x muscle deep. 12 cm above the elbow joint. Margins inverted, no blackening or scorching seen.

(3) Gun shot wound of entry 0.3 cm x 0.3 cm x muscle deep on the front of right upper arm 11 cm below the tip of shoulder joint. No blackening or scorching seen. Margins inverted.

(4) Gun shot wound of entry 0.3 cm x 0.3 cm x muscle deep on the medial border of right arm 2 cm below the elbow joint. No blackening or scorching seen.

(5) Gun shot wound of entry 0.3 cm x 0.3 cm x muscle deep on the medial border of right arm 12 cm below the elbow joint. No or* scorching, or, blackening seen. Margins inverted.

(6) Gun shot wound of entry 0.3 cm x 0.3 cm x muscle deep on the right side of abdomen 6.5 cm above the anterior iliac spine. No blackening or scorching seen. Margins inverted.

(7) Gun shot wound of entry 0.3 x 0.3 cm x muscle deep on the right thigh lateral surface upper part 3 cm below the anterior superior iliac spine. Margins inverted, No blackening or scorching seen.

(8) Gun shot wound of entry 0.3 cm x 0.3 cm x muscle deep on the right thigh

lower and lateral surface 8 cm above the knee joint. No scorching or blackening seen.

(9) Gun shot wound of entry 0.3 cm x 0.3 cm x muscle deep on the middle part of right thigh lateral surface 9 cm above the injury No. 8.

(10) Gun shot wound of entry 0.3 x 0.3 x muscle deep on the left side of chest 6 cm above the nipple, No scorching or blackening seen.

(11) Grazed wound 0.3 cm x 0.3 cm x skin deep on the right Side of neck middle part 12 cm below the right ear lobule. Direction is right to left.

(12) Gun shot wound of entry 0.3 x 0.3 cm x muscle deep on the left side of chin 0.5 cm lateral to mid line of chin. No scorching or blackening seen.

2.5 On internal examination 3rd, 4th and 6th ribs of right side of the deceased were found fractured. The right lung was perforated at several places, left lung was found congested AORTA was found perforated at two places. Four ounce of pasty food was found in stomach. The liver was congested and gall bladder was full but urinary bladder was empty. Several pellets were found embedded inside the body. The direction of the pellets was from right to left.

2.6 The cause of death was shock and haemorrhage due to ante mortem injuries.

3. The investigation of the case was taken up by S.O. Jai Ram Singh of P.S. Sumerpur (PW 4). He visited the place of occurrence on the same day and recorded the statement of Ram Pal Singh, Amar Singh and Darwari. He after inspecting the place of occurrence prepared the site plan of the place of occurrence Ext. Ka-2. He took into possession the blood stained stone from the Jagat (platform around the well) of the well and prepared its recovery memo Ext. Ka-3. He sent this blood stained stone for chemical examination. The report of the Serologist is Ext. Ka-13 and as the blood spots on the pieces of the stones were found disintegrated, no opinion about the blood could be given. The clothes of the deceased underwear, lagot, ceremonial thread and pendal were also taken into possession. After completing the investigation he submitted charge sheet Ext. Ka-4.

4. The prosecution to bring home the charge levelled against the accused examined informant of the case Raja Bhaiya, real brother of the deceased as PW 1. Ram Pal Singh brother in law of the informant has been examined as P.W. 2, Amar Singh, who is not related to the deceased and is resident of the same village has been examined as PW3. These three witnesses are the witnesses of fact. P.W.4 Jai Ram Singh is the Investigating Officer of the case. P.W. 5 SI Devendra Nath Chaturvedi conducted the inquest on the dead body and prepared its memo as stated above. P.W. 6 Dr. V.K. Nigam conducted autopsy on the dead body of the deceased. PW 7 Head Constable Kali Charan proved the chick FIR and GD entries.

5. The appellants in their statements u/s 313 Cr.P.C. have stated that they have

been falsely implicated in this case due to enmity. They did not adduce any oral evidence. They filed two documents Ext. Kha-1 and Kha-2. Ext. Kha-1 is the copy of the order sheet of Sessions Trial No. 112 of 1969 State v. Shiv Karan Singh u/s 302, 307 I.P.C. of P.S. Sumerpur and perusal of the same suggests that Shiv Karan Singh was found guilty of the charges against him u/s 307 and 302 I.P.O. and was sentenced to undergo life imprisonment u/s 302 I.P.C. and ten years imprisonment u/s 307 I.P.C. Ext. Kha-2 is the copy of the charge sheet of case crime No. 46, u/s 302 and 307 I.P.C. of P.S. Sumerpur.

6. After taking into consideration the submissions made by I lie learned Counsel for the appellant and appraisal of evidence the learned Sessions Judge found the testimony of eye witnesses PW1 to PW3 reliable and recorded the finding of conviction and awarded sentence to the appellant as aforesaid.

7. We have heard learned Counsel for the appellant Sri I.K. Chaturvedi, learned Amicus Curiae, learned AGA and have gone through the record.

Learned Counsel for the appellant has made following submissions:

PW 1 Raja Bhaiya and PW 2 Rampal examined by the prosecution are interested witnesses being brother and brother-in-law of deceased and PW 3 is of their caste. Their presence at the place of occurrence at the time of occurrence is not probable. Perusal of the site plan shows that the house of Goonga dhobi is towards the west of the place of occurrence and it has also come in the evidence that Pujari of the Mandir had also arrived at the place of occurrence but they have not been examined.

2. It has also been vehemently argued by the leaned Counsel for the appellant that the statement of witnesses of fact is not corroborated by medical evidence. That as per medical evidence rigor mortis was present on the whole body of the deceased. Post mortem examination was conducted by Dr. Nigam on 2.9.1981 at 3.45 p.m. Rigor mortis commences after one to two hours of the death and is developed from head to foot in 12 hours, therefore, the deceased had died somewhere between 3.00 a.m. to 4.00 a.m. on 2.9.1981, while as per the statement of eye witnesses the deceased suffered injuries on 2.9.1981 at 8.00 a.m. The deceased was done to death by some unknown person in wee hours of the day and the appellants have been falsely implicated in this case out of enmity.

3. It has also been submitted by the learned Counsel that deceased as per post mortem report had suffered 12 gun shot wounds in different part of his body. As per FIR and evidence on record he received these injuries from a single shot which is not possible.

4. It was also submitted by the learned Counsel for the appellants that no active role has been assigned to the appellant Chhote Lal. He has been falsely implicated in this case, the role assigned to him is of exhortation which is weak evidence and his conviction and not be upheld.

8. The learned AGA per contra argued that the evidence adduced by the

prosecution is trustworthy, though the witnesses were put to lengthy cross examination but nothing could be elucidated from their cross examination. Their presence at the place of occurrence is natural and probable. The testimony of the witnesses of fact is fully corroborated by the medical evidence on record and the learned Trial Judge committed no error in passing impugned judgement.

9. We have given our thoughtful consideration to the submissions made by the learned Counsel for the parties and perused the record. The law is settled on the point that mere relationship with the deceased is no ground to discard the testimony of a witness if it is otherwise found to be reliable and trustworthy. In the normal course of events a close relation would be the last person to spare the real assailants and implicate a false person. However, the possibility that he may also implicate some innocent person along with real assailants can not be ruled out. Therefore, his testimony is to be scrutinised carefully. It is also settled that non examination of independent witnesses is no ground to reject the reliable testimony of interested witnesses

10. PW 1 Raja Bhaiya has deposed before the court that deceased Raj f Kunwar was his real elder brother. He was murdered about 11 months back. The two accused are the real brothers and lived in his village at the time of occurrence. He along with deceased Ram Pal and Amar Singh were taking bath at the well situated near Ram Janki Temple. He was taking bath towards the road and the deceased was taking bath at the place which is towards temple, when appellant Sripal armed with tamancha and Chhote Lal armed with Bhala came there. Chhote Lal exhorted MAR SALON KO JANE NA PAYE. On his exhortation Sripal fired at Raj Kunwar from his tamancha. His brother suffered injuries. They raised alarm. The accused persons succeeded in running away. He was taking injured brother to Hamirpur who died near Kuchhera village because of the injuries. Hearing their alarm at the place of occurrence Darwari Chamar and priest of the temple had also arrived. The motive of crime, stated by him is that 3-4 months earlier of the occurrence a quarrel had taken place between deceased Raj Kunwar and appellant Sripal over the theka of liquor. The deceased had slapped Sripal, therefore, appellant Sripal bore enmity with him.

PW 2 Ram Pal Singh repeated the version given by PW 1 regarding occurrence. PW 3 Amar Singh also corroborated the testimony of PW 1 Raja Bhaiya and PW2 Ram Pal Singh.

11. In villages the people do take bath together at well. The well where the occurrence took place as has come in the evidence, is on the outskirts of the village and near a temple. Therefore, it is quite probable that the three witnesses, who are almost of the same age group, had gone to take bath together at the well and there presence at the well at the time of occurrence is probable.

12. It has come in the cross examination of PW1 that near the well where this incident took place there is no Abadi, except the house of Goonga dhobi and the

temple. He has also stated that none was present at the house of Goonga dhobi at the time of the occurrence and they came when he had brought his tractor to take his brother to Hospital. It has also come in his cross-examination that families of Goonga dhobi and Jumman live in that house. At the time of occurrence no one from the families of Gaoonga dhobi or Jumman came. After the gun shot when alarm was raised the Priest of the temple and Darbari had come. Thus non examination of Goonga dhobi and priest of the temple is of no consequence.

13. The next submission of the learned Counsel for the appellants is that statement of witnesses of fact is not corroborated by the medical evidence on record has no force.

14. P.W. 6. Dr. V.K. Nigam in his examination in chief after proving post mortem report Ext. Ka-8 has specifically stated that the deceased could suffer ante mortem injuries on 1.9.1981 at 8.00 a.m. It has come in his cross-examination that rigor mortis was present all over the body and it commences after 3-4 hours of death and covers whole of the body in about 12 hours. The deceased could have died about 12 hours before the time of post mortem. As per his statement the post mortem was conducted on 2.9.1981 at 3.45 p.m. The learned Counsel on the basis of this evidence has argued that the deceased died some times in wee hours of the day and did not suffer injuries at 8.00 a.m. on 2.9.1981 as stated by the prosecution witnesses. We do not find any force in this argument. Dr. Nigam has specifically stated in his examination in chief that the deceased could suffer ante mortem injuries on 2.9.1981 at 8.00 a.m. Hon'ble Supreme Court in the case of Pratsp Misra v. State of Orissa 1977 SCC 447 has laid down that the medical jurisprudence is not an exact science and it is indeed difficult for any doctor to say with precision as to when a particular injury was caused.

15. It is true that usually the rigor mortis commences after 3-4 hours of the death and covers the whole of the body in 10-12 hours, but in some cases the period may be shorter depending upon the built of deceased and other circumstances in which the deceased had died. It will not be out of place to mention here that as per the statement of the witnesses the deceased died in the way to Hospital and the prosecution witnesses have specifically stated that he had suffered injury at 8.00 p.m. on 2.9.1981.

16. As per Modi's Medical Jurisprudence and Toxicology, Twenty First Edition page 171, the time of onset of rigor mortis varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death.

17. As per John Glaister's Medical Jurisprudence and Toxicology page 113 as a rule, general stiffening will be established after ten to twelve hours, although in some cases the period may be shorter. Under certain circumstances, however, rigor mortis may appear unusually early or its appearance may be considerably

retarded.

18. Keeping in view the above two opinions and the fact that Dr. Nigarm has specifically stated in his examination in chief that the deceased could suffer ante mortem injuries at 8.00 a.m. on 2.9.1981 and the ocular evidence given by the three witnesses of fact, we are of the opinion that just because the rigor mortis has set all over the body at 3.45 p.m. on 2.9.1981 when the doctor conducted the post mortem, is no ground to arrive at the conclusion that the deceased died on 2.9.1981 in the wee hours of the day as argued by the learned Counsel for the appellants.

19. It has also been argued by the learned Counsel that all the injuries found on the body of the deceased were not possible by a single shot. It has come in the statement of PW 1 that the appellant Sripal had fired upon the deceased from the distance of 6-7 steps. This witness has also stated in his cross-examination that the deceased received gun shot injury when he was pouring water on his head from Lota. He was sitting with crossed legs. Thus it appears that when the deceased received gun shot injury, one of his hand was raised above his head. Dr. Nigam P.W. 6 has stated that all the injuries suffered by the deceased were caused from the same direction, it has come in the evidence that appellant Sripal had fired at the deceased from a distance of six or seven steps, hence there was sufficient dispersal of the shot. Thus, keeping in view the posture of the deceased when he received injuries and seat of injuries and the distance from which the fire was made, we are of the opinion that the deceased could suffer all the injuries from a single shot.

20. From the above discussion we are of the opinion that the learned Sessions Judge committed no error in placing reliance upon the testimony of three eye witnesses of the occurrence, which is supported by the medical evidence on record.

21. We, however, find force in this submission of the learned Counsel for the appellant that no active role has been assigned to appellant Chhote Lal. He has been assigned role of exhortation which is a weak evidence. Chhote Lal is a the real brother of appellant Sripal and as per the statement of PW 1 Raja Bhaiya, it was appellant Sripal who had quarrelled with the deceased 3-4 months earlier to the present occurrence and the deceased had slapped the appellant Sripal and Sripal had enmity with the deceased. Therefore, we are of the opinion that by way abundant caution it would not be safe to upheld the conviction of appellant Chhote Lal.

22. In the result, the appeal is partly allowed, while maintaining the conviction of appellant Sripal u/s 302 read with Section 34 I.P.C. and sentence of imprisonment for life awarded to him by the learned Sessions Judge, we set aside the conviction and sentence of appellant Chhote Lal u/s 302 read with Section 34 I.P.C.

23. Appellant Sripal is on bail. His bail is cancelled and sureties discharged. He

shall be taken into custody to serve out the sentence awarded to him. Let a copy of this Judgment be sent to the Sessions Judge concerned at once for compliance. The learned Sessions Judge concerned shall submit compliance report to this Court within a period of one month from today in this regard.

24. While appreciating assistance given to us by the learned Counsel for the appellant Sri I.K. Chaturvedi, Amicus Curiae, we order that a sum of Rs. 4000/- be paid to him as his fee for his valuable assistance to this Court.