

(2006) 03 AHC CK 0104
In the Allahabad High Court
Case No : Government Appeal No. 489 of 1982

State of U.P.

APPELLANT

Vs

Smt. Omviri, Akhlesh and Hansraj

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 302, 34

Citation : (2006) 03 AHC CK 0104

Hon'ble Judges : V.D. Chaturvedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : N.A. Moonis and M.C. Joshi and A.G.A, for the Appellant; P.N. Misra and Apul Misra, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The State has preferred this appeal against the judgment and order dated 20.11.1981, passed by the II Additional Sessions Judge, Bulandshahr in Sessions Trial No. 698 of 1980, acquitting the accused respondents Smt. Onkari, wife of Jagvir Singh, Akhilesh, S/o Jagvir Singh and Hans Raj, S/o Sheesh Ram and father of Onkari. The charge against the first two accused respondents was u/s 302 read with Section 34 I.P.C. and against the third accused respondent u/s 302 read with Section 114 I.P.C.

2. The relevant facts are these: The deceased was Rajviri, wife of Omvir--brother of Jagvir and the incident took place in between the night of 1st and 2nd October 1979 in the house of the accused in village Nibhora, P.S. Chandpur, District Bulandshahr. The F.I.R. was lodged by Hargyan Singh PW 6, son of Tara Singh at 8.40 A.M. on 2.10.1979. Malkhan Singh PW 1, Ratan Singh PW 2 and Lal Singh of the aforesaid village Nibhora were performing patrol duty in the night. At about 12.30 o'clock while they were near the house of Jagvir and Omvir (real brothers), they heard a shriek emanating from their house. On hearing it, they quietly entered the house of Jagvir through the portion of broken wall of the boundary of the said house. Malkhan Singh flashed his torch and in its light saw

that the deceased Rajviri wife of Omvir was lying on the ground under a Chhappar in the house of said Jagvir and her throat was being pressed with a danda, one side whereof was held by the accused respondent Onkari and the other by the accused Akhilesh. The accused Hansraj was holding the head of the victim. Small piece of a towel was kept on her throat under the danda. As soon as the torch light was flashed upon the accused, they stood up, Rajviri had by that time died. Jagvir immediately came there and requested Malkhan Singh and Ors. that they should not talk about the incident to anyone else as otherwise his family would be ruined. Malkhan Singh along with his companions left the place and resumed the patrol duty. In the morning of 2.10.1979 the villagers came to know about the death of Rajviri, Hargyan Singh PW 6 got a report of the incident written by Onkar Singh (son of Malkhan Singh PW 1) and went to P.S. Chandpur where he lodged the report. None was named in the F.I.R. and only this much was stated that Rajviri had been found dead in suspicious circumstances.

3. S.I. Gyan Prakash Sharma PW 7 with three constables reached the village of incident and prepared inquest report of the deceased as also other necessary papers. He also found vomit lying on the ground near the dead body of Rajviri. The same was taken in possession. Site plan of the place of occurrence was prepared. The dead body after being sealed was sent for post mortem which was conducted on 3.10.1979 at 4 P.M. by Dr. Banwari Lal PW 5 at 4 P.M. The deceased was aged about 22 years. There was no ante mortem injury visible except slight swelling of neck anteriorly in an area of 4" x 2". The death had occurred due to asphyxia as a result of strangulation.

4. An informer informed the Investigating Officer that actually Rajviri had been murdered and the incident had been seen by those persons who were on patrol duty in the fateful night. The Investigating Officer then contacted Malkhan Singh PW 1, Ratan Singh PW 2 and Lal Singh. On interrogation they made statements as to what they had seen that night when Rajviri was murdered. The motive that surfaced was that Jagvir--husband of Onkari had developed illicit relations with Rajviri which was not liked by Onkari. It was on account of this jealousy that she with the help of her son and father committed the murder of Rajviri.

5. The accused denied the prosecution allegations but did not lead any evidence in defence.

6. The prosecution in all examined eight witnesses. Malkhan Singh PW 1 and Ratan Singh PW 2 were said to be the eyewitnesses. Rest was more or less the evidence of formal nature. The evidence adduced by the prosecution did not commend itself to the trial Judge who recorded acquittal.

7. We have heard Miss N.A. Moonis, learned A.G.A. from the side of the State and Shri P.N. Misra, learned Counsel for the accused respondents.

8. The accused Hansraj died during the pendency of appeal and the same abated against him under order dated 15.10.2003. Presently, the Court is concerned only with the remaining two accused respondents, Onkari and her son Akhilesh.

9. The learned A.G.A. has argued that the trial Judge ignored the trustworthy evidence adduced by the prosecution and the impugned judgment is not at all sustainable. On the other hand, the learned Counsel for the accused respondents has supported the finding of acquittal arrived at by the trial court.

10. It should be stated before proceeding further that the High Court would interfere with acquittal only for strong reasons when it finds the conclusion to be perverse, highly unreasonable or contrary to the evidence on record. Even if two views are reasonably possible and the court below has taken a view in favour of the accused, the finding of acquittal would not be reversed. We have ourselves scrutinized the evidence on record adduced by the prosecution. True, it was proved that the death of Rajviri had taken place as alleged by the prosecution in her house and that of the accused, but the evidence was not convincing and sufficient to fasten the culpability on the heads of the accused respondents. The motive was said to be that Jagvir (husband of the accused respondent Onkari) had developed illicit relations with the deceased Rajviri. Onkari did not relish it and bore deep grudge against her (Rajviri). But the alleged motive was quite hazy, inasmuch as Prem Singh PW 3, brother of the deceased Rajviri was examined. He admitted that he did not know that Rajviri had developed intimacy with Jagvir. In para 3 of his statement he stated that Rajviri's husband Omvir never complained to him that Rajviri had developed illicit intimacy with his brother Jagvir. He never inquired from Rajviri as to what was the cause of her quarrels with Onkari. Till the death of Rajviri, he did not know anything about the illicit intimacy between Rajviri and Jagvir. If that was the reason of frequent quarrels between Rajviri and Onkari, it was unnatural that Rajviri's brother would not have known anything about it. So, the alleged motive for the commission of this crime was shrouded in obscurity.

11. The testimony of Malkhan Singh PW 1 and Ratan Singh PW 2 who had allegedly witnessed the incident while on patrol duty, could not inspire judicial confidence. The F.I.R. lodged by Hargyan Singh without naming anybody was scribed by Malkhan Singh's son Onkar Singh. The house of Malkhan Singh was only 200 paces away from the scene of occurrence. One Nepal Singh was the real brother of Malkhan Singh PW 1 as stated by him. Malkhan Singh had been taken in adoption by Tulsi. Anyway, the natural father of Nepal Singh and Malkhan Singh was Tara Singh. To Nepal Singh, sister of Rajviri had been married. Judged in this background, it was wholly unnatural that he (Malkhan Singh) kept mum after the incident at the imploring of Jagvir Singh and did not disclose the details of the incident to anyone. He and for that matter, other witness Ratan Singh PW 2 made disclosure to the Investigating Officer as late as on 7.10.1979 when he (I.O.) went to the village after receipt of the post mortem report on 5.10.1979, whereby it was disclosed that she had not died her natural death but was murdered. According to the Investigating Officer, on 7.10.1979, he was informed by an informer that he could know the facts of the incident from those who were on patrol duty that night. Then he called those persons (including Malkhan Singh and Ratan Singh) and recorded their statements who revealed the details of

murder.

12. The theory of Malkhan Singh and Ratan Singh being on patrol duty that night was itself doubtful, Malkhan Singh PW 1 stated that before this occurrence, a dacoity had taken place in the house of Lal Singh. Therefore, the villagers decided in a Panchayat that by organising group of four villagers, patrol duty would be performed every night. The names of 28 persons had been noted and duty of four persons had been allotted for every night. This fact was noted in a copy. In the eventful night, he, Ratan Singh and Lal Singh were performing the patrol duty. Tek Chand was also to perform the duty but was out of station. As soon as they reached the house of Rajviri, they heard shriek. They quietly entered the house. He lighted torch and saw that Rajviri was lying on the ground under a Chhappar in the house of Jagvir and her throat was being pressed with a danda, one side whereof was held by the accused respondent Onkari and the other by the accused Akhilesh. The accused Hansraj was holding head of the victim. Small piece of a towel was kept on her throat under the danda. As soon as the torch light was flashed upon the accused, they stood up. Rajviri had by that time died. Jagvir immediately came at that place and requested Malkhan Singh PW 1 and Ors. that they should not report to the police and talk others about the incident else, his family would be ruined. Thereafter, this witness and Ors. resumed the patrol duty.

13. Ratan Singh PW 2's statement is also in the same tenor. The resolution of patrol duty is dated 14.5.1978. It is purported to bear the signatures of the witness Ratan Singh but he could not identify his signatures in this copy. The group of persons to perform patrol duty on . each day also remained unchanged till the time of occurrence. That is, if one group was to perform patrol duty on Monday, the same group would perform such duty on every Monday without any change. It was unusual. If a particular person was allotted patrol duty, he could perform it for some days and not for years. It was also unusual that the Same set of 28 persons would continue to perform patrol duty, leaving all other male inhabitants of the village at leisure. The conduct of these witnesses, as rightly observed by the trial court, in performing the patrol duty was unnatural. So was the manner of performing the patrol duty. It was meant to guard against any untoward incident and to take remedial measure. They did nothing of the kind. They allegedly heard the shriek of the victim, but quietly entered the house of Jagvir without shouting as to what was happening there. Even after they came out of the house after seeing the incident, they did not mention to anybody about it. This conduct of the witnesses was most unnatural when one of them was closely related to the victim. Needless to say that ordinarily, a person performing patrol duty would at once challenge on hearing slightest cry or alarming sound. The witnesses allegedly heard the shriek but did not raise any alarm. Instead of offering any challenge, they quietly went out of the house of Jagvir and resumed the patrol duty without reporting the matter to the police or talking about it to anyone else till 7.10.1979 when they revealed it to the Investigating Officer. It spills beyond comprehension that an ordinary person

would behave this way, particularly when he is not under any threat from anybody. What they allegedly did after seeing the incident was against the very purpose of patrolling. Malkhan Singh PW 1 admitted that he came to know about the presence of the police in the village on 2nd and 4th October 1979. He could have easily contacted the Sub Inspector and told him about what he had seen. As we have observed earlier, he as well as Ratan Singh appeared before the Investigating Officer only on 7.10.1979 when called by him after getting information from some informer.

14. On threadbare analysis, the accused appellants could not be deemed to be the culprits of this crime and verdict of guilty could not be returned on whims, surmises and conjectures. Of course, the deceased was the victim of violence but the court of law is to be guided by legal evidence. There were other inhabitants too of the house where the incident took place. The greater possibility was that the deceased was quietly done to death unnoticed by any person including Malkhan Singh PW 1 and Ratan Singh PW 2. The court could not enter into a guess work as to who could have murdered Rajviri. The finding of acquittal arrived at by the trial Judge is reasonable and based on judicious appraisal of evidence.

15. In view of the above discussion, we do not locate any merit in this appeal. It is hereby dismissed. The appeal has already, abated in respect of the third accused Hansraj.

16. Certify the judgment to the lower court immediately.