

(2014) 01 AHC CK 0303

In the Allahabad High Court

Case No : Government Appeal No. 1749 of 1985

State of Uttar Pradesh

APPELLANT

Vs

Naimuddin and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(3)
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2014) 1 ACR 741 : (2014) 84 ALLCC 940

Hon'ble Judges : Rakesh Tiwari, J; Kalimullah Khan, J

Bench : Division Bench

Advocate : Ram Yash Pandey, A.G.A, Advocate for the Appellant; Birendra Singh, S.N. Shukla and Rishabh Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri Ram Yash Pandey, learned AGA for the State, Sri Rishabh Kumar, learned Counsel for the respondents-accused and perused the record. This Government appeal has been preferred u/s 378(3) Cr.P.C. by the State of U.P. challenging the validity and correctness of the judgment and order dated 29.3.1985 passed by the learned 2nd Additional Sessions Judge, Farrukhabad in S.T. No. 156 of 1984 (State v. Naimuddin and others) acquitting respondents-accused Naimuddin, Nand Ram, Matadeen and Balakram for an offence punishable under sections 302/34 and 120B, IPC.

2. During the pendency of appeal respondent Nos. 1 and 3, namely, Naimuddin, who was Pradhan of the village and Balakram have died. The appeal against the aforesaid respondents-accused is, therefore, abated.

3. The facts of the case in nut-shell are that on 14.8.1983 at about 8.00 P.M. Matadin, Balakram and Nandram came to the house of Jhamman Lal in village Kharepur, P.S. Gursahaiganj District Farrukhabad and demanded immediate payment of the price of milk from his son Chhotey Lal, who expressed his inability to pay the price of the milk immediately. Thereupon, accused Matadin,

Balakram and Nandram beat him with fists. Alarm raised by the victim attracted accused Naimuddin and others. When Jhamman Lal wanted to go to the police station for lodging the report, accused Naimuddin, the then Pradhan of the village assured him that he would look into the matter next morning. On 15.8.1983 at about 6.30 A.M. when Chhotey Lal was sitting on a Charpai at his door, accused Matadin, Balakram and Nandram came there caught hold of Chhotey Lal and forcibly tried to take him away on the pretext that he was called by Naimuddin, the Pradhan. After going for about 15 paces accused Nandram pierced a knife in the side of the abdomen of Chhotey Lal. The incident is said to have been seen by Ram Autar, Jabbar and others. Ram Autar and Jabbar told Jhamman Lal that accused Naimuddin had asked accused Matadin, Balakram and Nandram in their presence to kill Chhotey Lal and that he will help them in every way. "CHHOTey LAL CHAIN SE NAHIN BAITHA HAI AUR NAHIN BAITHNE DETA HAI. BAHUT DIMAG KHARAB HO GAYA HAI. IS SALEY KG JAN SE MAR DO. MAIN TUMHARI HAR TA-RAH SE MADAD KAROONGA." On hearing about the incident, Jhamman Lal lodged a written report at P.S. Gursahaiganj on 15.8.1983 at 7.45 A.M.

4. On the basis of written report FIR was registered at case crime No. 179 at 7.45 A.M. on 15.8.1983. The distance between the police station and the place of occurrence was reported to be about 2 Kms. Recovery memo of blood stained and plain earth (Ex. Ka-5) was prepared by the I.O. He also prepared recovery memo of shirt and baniyan (Ex. ka-6) on the same day. The dead body of Chhotey Lal was sent by S.O. Gursahaiganj in a sealed cover through carriers C.P. No. 33, Ram Saran and C.P. No. 1078 Sovaran Singh for post-mortem examination.

5. The post-mortem on the cadaver of deceased Chhotey Lal was conducted by Dr. Rajendra Shukla (P.W.5) on 16.8.1983 at 2.30 P.M. The external examination of the body of the deceased showed that he was a man of average built, aged about 20 years and died about one and half days before. Rigor mortis had passed off from upper limbs and partially present in lower limbs. Abdomen was found distended with abscess present at places. Greenish discoloration an abdominal wall was present. Rt. eye was partially open and Lt. eye was closed. Mouth was partially open, blood with fluid was coming out of the mouth & nostril. Face, penis scrotum were swollen, mud was present on the feet of the deceased. Some part of the intestines was coming out on Lt. side of abdomen. On internal examination it was found that inter-coastal muscles between X & XI ribs was cut clean. Heart was empty. Peritoneum was found cut under wall of injury No. 1. Cavity contains fluid blood with clots about 2 litres with faecal matter. Stomach showed cut of size 1.5 cm. x 0.5 cm. x cavity deep and contained about 300 cc. blood. Small intestine showed cut at places & contain gases with fecal matter. Gall bladder was full with 950 grams matter. Spleen showed a clean cut of 2.5 cm. x 0.5 cm. at upper pole and bladder was found empty.

6. Following ante-mortem injuries were found on the person of the deceased:

1. Stab wound 4 cm. x 1 cm. x abdominal cavity deep 17 cm. from umbilicus at about 1 to 2 O" clock position oblizue/placed upper angle of the wound is sharp & lower angle being ragged. Margins are ragged.
2. Abrasion 4.5 cm. x 1.5 cm. on the inner and middle of Lt. leg longevity direction placed.
7. In the opinion of the doctor, the death had occurred due to shock and haemorrhage as a result of ante mortem injury No. 1.
8. On committal of the case to the Court Sessions, the Trial Court framed charge u/s 302/34 IPC against respondents-accused Naimuddin, Mata-din, Balakram and Nandram and charge u/s 120B, IPC was framed against respondents-accused Naimuddin, Matadin, Balakram and Nandram to which they pleaded not guilty and claimed to be tried.
9. In order to prove its case the prosecution examined five witnesses namely, Jhamman Lal (P.W.1), Ram Au-tar (P.W.2), Jabbar (P.W.3), Genda Singh (P.W.4) and Dr. Rajendra Shukla (P.W.5).
10. In their statements u/s 313 Cr.P.C. the respondents-accused stated that they have been falsely implicated in this case. In defence the respondents-accused examined Jafaruddin Khan (D.W.1) and Ranjeet Lal (D.W.2).
11. Learned Additional Sessions Judge after hearing the parties and on perusal of the record by the impugned judgment and order dated 29.3.1985 acquitted the respondents-accused from the charges under sections 302/34 and 120B , IPC.
12. Aggrieved by the aforesaid judgment and order dated 29.3.1985 the State of U.P. has preferred the present Government appeal on the ground that the learned Trial Court has erred in holding that the respondents-accused had no motive to commit the murder of Chhotey Lal (deceased); that there was no conspiracy amongst the accused to commit the murder; that there were material inconsistencies in the testimony of Ram Autar (P.W.2) and Jabbar (P.W. 3) with regard to time and place of incident and that the learned Trial Court has also committed an error in not relying upon the evidence of Jhamman Lal (P.W.1), Ram Autar (P.W.2) and Jabbar (P.W.3) for insufficient reasons.
13. According to him, Jhamman Lal (P.W.1), Ram Autar (P.W.2) and Jabbar (P.W.3) have given a consistent account of the incident which finds material corroboration from the FIR, hence the respondents-accused could not have been given benefit of doubt. It is also submitted that Ram Autar (P.W.2) and Jabbar (P.W.3) stated about the conspiracy amongst all the four respondents-accused to commit the murder of Chhotey Lal (deceased) and had told about it to Jhamman Lal (P.W.1) and the learned Trial Court has erred in holding that no offence u/s 120B, IPC was made out against the respondents-accused, hence the acquittal of all the four respondents-accused is contrary to the weight of evidence on record, bad in law and has resulted in miscarriage of justice.

14. After hearing learned Counsel for the parties and on perusal of the record it is found that undisputed facts from the record are:--

Jabbar (P.W.3) is inimical to respondent-accused Naimuddin, therefore, there was no occasion for Naimuddin to have called him to his place to discuss any plan of murder. Even from the record it appears that P.W.3 in his statement stated that Naimuddin said that plan to commit murder of Chhotey Lal would be discussed later on. In his statement he stated that-

15. As regards motive is concerned, it is apparent from the statement of Jhamman Lal (P.W.1) that he has constructed his house on 1/4th part of plot No. 518 and the remaining part of the aforesaid land is of accused Balakram, Matadin and Kripal on which they have constructed their houses. In his cross-examination he has denied the suggestion that there was any enmity with the respondents-accused in respect of this land prior to the incident. Moreover, from the statement of Ram Autar (P.W.2) it is apparent that one day prior to the incident an altercation had taken place between Chhotey Lal alias Roop Lal and respondents-accused Matadin, Balakram and Nandram for payment of Rs. 7/- towards milk purchased by Chhotey Lal (deceased) and that respondent-accused Naimuddin had taken other respondents-accused persons to his house. The aforesaid motive appears to be alleged but as stated that P.W.1 has denied any enmity regarding the land with the respondents-accused persons and payment of Rs. 7/- for the milk purchased in the last 3-4 days before the incident by Chhotey Lal (deceased) cannot be the one for which life of a person may be taken on this pretext. Thus, motive is not proved.

16. We have considered the plea of the parties regarding the inquest report being ante-dated or delayed. It is apparent from perusal of the original inquest report on file that two different pens have been used in writing the inquest report. Some of the columns have been filled in with black ink and others with blue ink. Therefore, we find force in the contention of learned Counsel for the respondents-accused that Chhotey Lal was done away by somebody in the night and his family members were in a confused state as to on whom the blame should be placed. This confusion appears to be fortified by the fact that the column containing the name of the complainant has been left blank. Thus apart from differences in ink a vital information is also lacking in the said inquest report.

17. The second wife of Chhotey Lal, who was already a married women to some one else, is said to have been eloped with Chhotey Lal and her husband had many a times come to the house of Chhotey Lal (deceased) to take back his house and in this regard there was altercation between the family members. It appears from the statement of Jhamman Lal (P.W.1) that the second wife of Chhotey Lal had also come to Farrukhabad but had not been produced in Court and, therefore, this fact also goes to prove that the story of the defence that Chhotey Lal could have been done away by some other persons cannot be totally brushed aside.

18. On one hand, the Investigating Officer is said to have remained for inquest only for 15 minutes at the spot whereas it has also come in evidence that he was there for the inquest for about one and a half hours. Thus, there are series of discrepancies and contradictions in the statements of witnesses. The murder had taken place in earlier hours or day light on 15.8.83 when Raja Ram and Jabbar who are said to have informed Jhamman Lal (P.W.1), the father of the deceased that Naimuddin and others have got his son murdered. This is said to have communicated to Jhamman Lal (P.W.1) about 15-20 minutes of the incident but their statements read with the statement of Jhamman Lal (P.W.1) in this regard do not corroborate as it has clearly come in the evidence of P.W.3 that there was a meeting at the tube-well of respondent-accused Naimuddin where Matadin, Balakram and Nandram were also present but no plan to commit murder of Chhotey Lal the same night was finalized in the said morning. When questioned on the point that why he did not inform the family members of the deceased he said that it was too late in the night. The distance between the residence of Jhamman Lal (P.W.1) and Jabbar (P.W.3) is about 3 kms. and if it was a case of committing murder of a person it cannot be conceived as to why he restrained himself from informing them. Therefore, the statement of P.W.3 has credence to show that the murder of Chhotey Lal the same night was not finalized.

19. In this case medical report does not support the ocular testimony on the point of time of incident as PW-1 has stated that deceased has gone to attend the call of nature in the morning and when he returned and sat on the cot at about 6.30 A.M. on 15.8.1983 when the incident took place. Autopsy shows that the stomach of the deceased was empty and small as well as large intestines were full of fecal matters and gases. This position of small and large intestines points out that deceased was done to death during night i.e. much prior to the alleged time of occurrence as suggested by the learned Counsel for the respondents-accused.

20. For all the reasons stated above we find that there are contradictions and discrepancies in the statements of material witnesses i.e. P.Ws. 1 to 3. The Trial Court has rightly given benefit of doubt to the respondents-accused persons. We find in the facts and circumstances that the learned Trial Court has not erred in holding that no offence u/s 302 read with sections 34 IPC and 120B, IPC is made out against the respondents-accused. The view taken by the Trial Court is reasonable and just. In the light of the aforesaid discussions we are of the view that there has been no miscarriage of justice as argued by the learned AGA for the State. We uphold the impugned judgment of acquittal dated 29.3.1985 passed by the learned Trial Court. The Government Appeal is accordingly, dismissed.