

(1993) 03 AHC CK 0016

Allahabad High Court

Case No: Criminal Appeal No. 2872 of 1979

Hussain Ahmad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: March 12, 1993

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304(1), 307

Hon'ble Judges: Palok Basu, J and Surya Prasad, J

Final Decision: Partly Allowed

Judgement

1. Hussain Abroad alias Sainu, for short, Sainu has filed this appeal against his conviction under Section 302, IPC and sentence of life imprisonment and under Section 307 (1) IPC and sentence of five years" R I. as passed by 2nd Addl. District & Sessions Judge, Meerut on 2791979 in Sessions Trial No. 467 of 1977.

2. The appeal was filed by Sri Ravi Kiran Jain, Advocate on behalf of the appellant Sainu. However, he was not present on the last occasion when this appeal was called out for hearing. On request Sri Jain did not appear to plead the case of the appellant. Consequently the then Bench hearing the matter directed for cancellation of bail of the appellant Sainu and directed his arrest. The ordersheet indicates that the appellant was produced in this court on 5111992 and then he had expressed a desire that he would like to engage some other counsel. The ordersheet further indicates that no counsel has been engaged by the appellant.

3. On 2621993 when this appeal was put up for hearing Sri Y K. Shukia counsel of eminence on criminal side of this court, was appointed Amicus curiae to appear on behalf of the appellant. The court records appreciation that Sri Shukia has argued the matter with ability and has placed the entire record thoroughly, Sri D.N. Yadav, learned A. G. A. has been heard in opposition. It may be mentioned here that the trial Judge has acquitted Islamuddin of the charges framed against him regarding which there is no appeal and the said acquittal has become final.

4. The charges against the appellant were twofold. Firstly, that on 23.7.1977 at about 8 p. m. in Mohalla Islamabad, Police Station Kotwali Meerut, the appellant caused injuries by knife to Jamil Ahrrad who died and thereby he committed offence punishable under Section 302, IPC. Secondly, that in the said incident the appellant caused knife injuries to P. W. 3 Iftikhar Ahmad with the intention to cause his death which is punishable under Section 307, IPC.

5. In order to prove the prosecution case three eyewitnesses have been examined. P. W. 1 Zaheer Ahmad is the informant, P.W.3. Iftikhar Ahmad is the injured eyewitness and P. W. 6 Sadiq is the eyewitness who reached the place at the time of the incident.

6. The prosecution case has been accurately described by the trial Court and it is desirable to reproduce it.

7. The occurrence leading to the present trial is alleged to have taken place on 22.7.1977 at about 8 p. m. in Mohalla Islamabad lying within P. S. Kotwali, Meerut, in the lane in front of the shop of accused Islamuddin, a barber by profession. His shop opens in eastwest gali and another gali just in front of his shop runs towards south. The house belonging to Zaheer Ahmad (P. W. 1) and his father Iqbal Ahmad alias Babu lies on the western side of this northsouth gali, which near their house takes a turn towards east. The location of the shop of accused Islamuddin and the house of Zaheer Ahmad (P.W. I) has been shown in the site plan (ExtKa12).

8. Admittedly, Smt. Sanjeeda Begum, younger sister of Zaheer Ahmad (P. W. 1), was married about two years prior to the occurrence in question to accused Hussain Ahmad alias Sainu, also referred to as Sannu or Saini in the evidence but it would be convenient to call him simply as Sainu hereinafter. The prosecution case is that some time after the marriage, accused Sainu started illtreating and harassing his wife. He also used to beat her after getting drunk. Smt. Sanjeeda Begum had lodged a report with the police against him. About 1& months to the occurrence in question, this accused orally divorced her, who then started living with her parents in Mohalla Islamabad. After the divorce, Sainu started to sit often at the shop of his friend accused Islamuddin and defamed Sanjeeda Begum. He also used to speak ill of her parents and other family members and to utter threats. He had declared that he would abduct Sanjeeda Begum. Zaheer Ahmad P. W. 1 had asked accused Islamuddin several times not to allow Sainu to sit at his shop but Islamuddin had replied that Sainu was his friend and he could not stop Sainu from coming to his shop. It is alleged that in the afternoon of 23.7.1977 Iftikhar Ahmad P. W. 3, the first cousin of Zaheer Ahmad P. W. I, had visited the latter's house. Sainu was present at the shop of accused Islamuddin and had then quarrelled with Iftikhar Ahmad, same day in the evening, Jameel Ahmad (deceased), who was a distant cousin of Zaheer Ahmad and was resident of Mathura, had come to Zaheer Ahmad's house. Iftikhar Ahmad (P. W. 3) also reached there at about 7 p. m. Both Jameel Ahmad and Iftikhar Ahmad took lod at the house of Zaheer Ahmad and then at about 8 p. m. they went

out for a walk and for taking betels. Zaheer Ahmad (P. W. 1), his younger brother Aijaz, father Iqbal Ahmad and Phoopa Saddiq (P. W. 6) who lived with them stayed at the house. As soon as Jameel and Iftikhar Ahmad reached in front of the shop of Islamuddin, Sainu was seen standing there. He was making false allegations against Sanjeeda Begum. Iftikhar Ahmad asked him as to why he defamed Sanjeeda Begum, Sainu replied that he had taken a vow (aaj ghar see maan ki qasam khakar aaya boon) that he would kill all of them. Iftikhar asked him to fulfil his vow whereupon Sainu started Marpit with Iftikhar and after taking out a knife from his pocket Sainu stabbed Iftikhar in the abdomen on the left side. Jameel Ahmad tried to save Iftikhar but Sainu stabbed him as well and he fell down on the ground. Sainu gave another blow with Knife to Iftikhar Ahmad when the latter tried to catch hold of Sainu. On commotion, Zaheer Ahmad (P. W. 1), his younger brother Aijaz and their Phoopa Saddiq (P. W. 6) has rushed from their house towards the place of occurrence. On seeing these persons, Sainu asked Islamuddin to put off lights saying that the persons were coming. Zaheer Ahmad (P. W. 1) took cane from Aijaz and struck at Sainu's hand in which he was holding knife and as a result thereof, the cane broke into two pieces and the knife fell down from the hand of Sainu. Accused Islamuddin had put off lights and released Sainu from the grip of Iftikhar Ahmad. The both ran away towards Bisatyonwali "Majid, Jameel Ahmad died at the spot. Iftikhar Ahmad was taken in a rickshaw by his Phooji, Smt. Munni, to P. L. Sharma Hospital Meerut and Zaheer Ahmad P. W. 1, wrote the first information report (Ext. Ka2) and lodged the same at P.S. Kotwali, Meerut situated at a distance of about one mile same day at 8.35 p. m. On its basis, Head Moharrir Dharam Pal Singh, P. W. 5 prepared formal report (Ex. Ka4) and registered a case in the General Diary at Serial No. 44 vide copy (Ext. Ka5).

9. The injuries of Iftikhar Ahmad (P. W. 3) were examined by Dr. K.D. Sharma (P. W. 2) a Medical Officer of P. L. Sharma Hospital, Meerut, on Emergency Duty, that very day, i. e. 23/7/77 at 8.25 p. m. His injuries, noted in the accident Register, vide copy Ext. Ka3, were as follows :

(1) Incised wound 3 cm. x 1 cm. x muscle deep on the outer and upper part of left upper arm.

(2) Incised wound 3 cm. X 1 cm. x abdominal cavity deep outer side of left abdomen, at 3 o'clock position 10 cm. from umbilicus.

Both of his injuries were kept under observation. In the opinion of the Doctor, the injuries were fresh and were caused by sharp object. Intimation was sent to the police and a report was submitted for recording the dying declaration of Iftikhar as his condition was grave. His so-called dying declaration (Ext. Kha1) was recorded by a Magistrate same night at 10:05 p. m.

10. The investigation was entrusted to S. I. Chatar Singh (P. W. 7), who was present at P. S. Kotwali, Meerut at the time when the report was lodged. He immediately

proceeded to the place of occurrence alongwith Inspector Sher Singh and S. I. Faujdar Khan. On reaching the place of occurrence, he found the deadbody of Jameel lying in the gali on the pavement infront of the shop of accused Islamuddin. After appointing the Panches, he prepared the inquest report (Ext. Ka6) and the sketch of deadbody [Ext.Ka7] Two keys in a keyring, 62 paisa in cash, some beedi and a match box were found in the pocket of the deceased's pant. The pant and the abovementioned articles were sealed in the bundle and memo (Ext. Ka8) was prepared about them. The deadbody was sealed in a cloth and was given in the custody of constable Raj Kumar and Anant Kumar along with Chalan lash (Ext. Ka9) and other necessary papers for the postmortem examination. The blood was found on the pavement near the deadbody. The blood stained pieces of bricks (material Ext. 2) and ordinary pieces of bricks (material Ext. 3) were taken into custody and were sealed in two separate bundles, vide memo (Ext. Ka10). Two pieces of cane (material Exts. 4/1 and 4/2) and a blood stained knife (material Ext. 1) was also found lying nearby. These were also sealed and memo (Ext. Ka11) was prepared about them. At that very spot. S. I. Chatar Singh recorded the statement of Zaheer Ahmad and after sput inspection, prepared siteplan (Ex. Ka12). A bulb was burning on the electric pole at the corner of northsouth lane near the house of Habeebullah infront of the shop of accused Islamuddin. The S. I. got the shop of this accused opened and inspected the same. One tubelight in the northern wall and 2 electric points along with bulbs were found in the western wall inside the shop and another bulb over the door of the shop facing castwest gali. These electric lights were found in working order. Next day, i. e. on 24/7/1977, the S I. went to P. L. Sharma Hospital, Meerut and recorded the statement of injured Iftikhar Ahmad. The same day at about 7.45 a. in the arrested accused Islamuddin near Qola Khan Chaupla in the city of Meerut. Thereafter he went to the house of the complainant and recorded the statements of Saddiq etc. Zaheer Ahmad gave bloodstained clothes namely, shirt (material Ext. 5) banyan (material Ext. 6) and a Payjama (material Ext. 7) belonging to Iftikhar Ahmad, The clothes were sealed and memo (Ext. Ka13) was prepared about them. A search was made for accused Sainu but he was not traceable.

11. The autopsy on the deadbody of Jameel Ahmad was performed by Dr. O. N. Srivastava P. W. 4 Medical Officer, P. L. Sharma Hospital, Meerut, on 24/7/1977 at 3.30 p. m. The deceased was of average built and in the opinion of the doctor the deceased was about 25 years old. Rigor mortis was present both in the superior and inferior extremities. The abdomen was slightly distended and signs of decomposition were present at places. The deadbody bore antemortem injuries, which have been noted in the postmortem examination report (Ext. Ka 3A) as follows :

(1) Incised wound 3 cm. X 0.3 cm. x skin deep on the outer aspect of right elbow region.

(2) Abrasion 1 cm. x 1 cm. on the front of left knee.

(3) Punctured wound with clean cut margins 3 cm. X 05 cm X chest cavity deep with tailing 1.5 cm. in length towards the left nipple. The wound is on the front of chest left side 5 cm. away from the left nipple at 2. O'clock position.

On internal examination membranes and the brain were found pale. There was allotted blood present under the chest wall with muscles cut under injury No. 3 second rib of left side was cut. The cutting object entered the chest cavity in the space between 1st and 2nd rib. The pleura and upper lobe of left lung were cut through and through. The left pleural cavity was full of blood. The arch of the aorta had a cut 1 cm. in length. The heart was empty. The stomach contained semidigested food about 200 grams in weight. The death, in the opinion of the doctor, was caused by shock and haemorrhage as a result of the above described injuries which were sufficient in the ordinary course of nature to cause death. The clothes on the deadbody namely, one shirt, one knicker and one underwear were taken and were sent in a sealed cover to the police station.

12. S. I. Chater Singh P. W. 7, arrested accused Sainu on 25/1/1977 and after completion of the investigation, he submitted chargesheet (Ext. Ka14) against the present two accused on 4/9/1977.

13. It may be stated here that the appellant Sainu has denied the charges levelled against him and has attributed his false implication due to enmity. No defence witness has been examined by him.

14 There is absolutely no material emerging from the cross-examination of the three eyewitnesses mentioned above which may discredit the version stated by them. The appellant has more than enough motive and his main attack was on Iftikhar Ahmad, (P. W. 3), who per chance survived, even though his dying declaration has been recorded. It is really unfortunate that the deceased Jameel, a young man came to intervene and save the life of Iftikhar Ahmad and in that process received two injuries one of which landed on his vital part and resulted in his death.

15. The argument of Sri Shukla on behalf of the appellant with regard to the criticism of the three witnesses may be summarised and dealt with accordingly in the following manner. It is said that (P. W. 1) Zaheer Ahmad could not have reached the place of occurrence because his house is about 200 yards away from the place of the incident. It may be stated here that Zaheer Ahmad has only mentioned about that much of incident which was actually seen by him. In this connection one may refer to the details of the incident as narrated by Iftikhar Ahmad P. W. 3. the injured eyewitness which contains the details of the whole incident. Therefore, there is truthfulness in the statement of Zaheer Ahmad when he missed to mention some of those details which may have happened at the earlier part of the incident. Similarly, the statement of Saddiq is also supported by all the facts and circumstances of the case including the injuries sustained by Iftikhar Ahmad and Jameel. The F.I.R. lodged by Zaheer Ahmad mentions the names of Saddiq and Iftikhar Ahmad. It may be

noted that the F.I.R. was lodged very promptly at the Police Station Kotwali within about half an hour of the incident. Consequently the trial court has rightly placed implicit reliance on the testimony of these three witnesses and has recorded the conviction of the appellant. The prosecution case, therefore, stands fully proved against the appellant.

16. Sri Shukla then vehemently argued that taking into account the special facts and circumstances it cannot be said that the appellant had any intention to cause the death of Jameel and he argued that looking at the fact that there was only one injury which accidentally landed on the vital part of Jameel, no other injury was inflicted on the vital part of Jameel's body. It is true that the appellant had at no point of time any intention to commit the murder of Jameel who unfortunately became the victim of the incident. It is also true that there was no motive whatsoever for the appellant to commit the murder of Jameel. The fact that the knife was in the hands of the appellant when he inflicted injuries on Jameel, it shall have to be held that the appellant had knowledge of the fact that he may cause such injury as may result in death of Jameel. Consequently there is force in the argument of the learned Counsel for the appellant Sri Shukla that the appellant can and should only be convicted under Section 304, Part I, IPC. In this connection the injury caused to the other surviving victim, namely, Iftikhar Ahmad, P. W. 3, was also on the vital part and the trial court has rightly convicted the appellant under Section 307 (I), IPC with regard to the injury caused to Iftikhar Ahmad. The sentence of five years" R. I. under Sec. 307 (I) IPC appears to be proper. However, on hearing the learned Counsel for the appellant at length on the sentence which may appropriately be passed and after hearing the A. O. A. for the State it appears desirable to sentence the appellant to ten years R. 1. under Section 304, Part I, IPC.

17. Consequently, the appeal partly succeeds. The conviction of Hussain Ahmad alias Satnu under Section 302, IPC and sentence for life imprisonment thereunder are set aside, instead he is convicted under Section 304, Part I, IPC and sentenced to ten years R. I. His conviction under Section 307, (I), IPC and sentence of five years" R. 1. thereunder are upheld. Both the sentences would run concurrently. The appellant is in jail. He will undergo the sentences awarded to him by this Court. In case the appellant may have been bailed out, he will be taken into custody forthwith to serve out the sentences awarded as above.