
(1994) 01 AHC CK 0059

Allahabad High Court (Lucknow Bench)

Case No: Criminal Appeal No. 571 of 1979;

State of U.P.

APPELLANT

Vs

Kailash Nath & Ors.

RESPONDENT

Date of Decision: Jan. 28, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 149, 302

Hon'ble Judges: D.K.Trivedi, J and R.K.Agrawal, J

Final Decision: Dismissed

Judgement

D. K. Trivedi, J.

The present criminal appeal is filed by the State of U.P. against the judgment and order dated 1621979, passed by the 1st Addl. Sessions Judge, Unnao, acquitting the respondents from the charges levelled against them holding that the prosecution has failed to prove the guilt of the respondents beyond reasonable doubt.

2. Initially, one Brij Mohan was also prosecuted alongwith the respondents but coaccused Brij Mohan died during the pendency of the trial, hence the trial abated against coaccused Brij Mohan.

3. All the accused persons were prosecuted under Sections 302/149 I.P.C. and 323/149 I.P.C. Accused Kailash Nath was further prosecuted under Section 148 I.P.C. and the remaining accused were prosecuted under Section 147 I.P.C. The respondents as well as the deceased are residents of the same village and are related to each other. One Mahabir had three sons namely; Raj Bahadur, Brij Mohan and Murli Dhar (deceased) Raj Bahadur's Sons Kailash Nath and Alma Ram are accused persons and accused Om Prakash son of Jeet Bahadur is grand son of Raj Bahadur. Bihari son of Brij Mohan is also an accused. Murli Dhar is deceased in this case and Ashok Kumar, P.W. 1 is the complainant in this case. According to the prosecution case, the incident took place on 2541976 at about 1230 noon in village Sasan, PS. Bighapur, District Unnao. It is said that

on the date of the incident, the Kurk Amin had come to the village Sasan and started realising the "Lagan" as well as Vikas Kar. Murli Dhar (deceased) informed him that he would pay the "Lagan" only in respect of two khatahs on that day to day only and not on the next date "Vikas Kar" would be paid. It is said that accused Kailash Nath asked him to pay the entire amount of arrears on that very day otherwise he would not allow him to harvest the crop of wheat. On this some altercation took place and it is said that accused Kailash Nath armed with axe, Atma Ram armed with "Danda" Started assaulting Murli Dhar with their respective weapons. The complainant tried to save Murli Dhar but it is said that Brij Mohan and Om Prakash, who were armed with lathis started assaulting the complainant as well as Murli Dhar (deceased). It is said that Kailash Nath also assaulted him with axe which hit him on his head. On receipt of the injuries Murli Dhar fell down and became unconscious and thereafter, the caused persons ran away. P.W. 1 Ashok Kumar, then went to the police station Bighapur, and lodged the F.I.R. (Ext. Ka4) on 25/4/1976 at about 2.00 p.m. The distance of the Police Station Bighapur is about 6 miles from the place of incident. Constable Sahdeo registered the case in the G.D. (Ext. Ka13) (P.W. 6) Suraj Pal Singh, S.O., who was present at the time of lodging of the F.I.R. recorded the statement of the complainant at the police station itself and, thereafter, sent him to the P.H.C. Bighapur for medical examination through Constable Ram Sunder Singh. The Investigating Officer, thereafter, left for the spot but while he was passing nearby Bighapur Hospital, he noticed that a bullockcart was parked and on enquiry, he came to know that the condition of injured Murlidhar was serious. On receipt of this information, he made an arrangement to send Murlidhar to Sadar Hospital and thereafter, sent him to Hospital for medical treatment. Thereafter, he reached the place of the incident and prepared site plan Ext. Ka4. He also collected samples of blood stained and plain earth from the spot of the occurrence and also prepared a memo Ext. ka35 to this effect. He also recorded the statements of the witnesses and thereafter returned to the police station and at the police station, he found Kailash as well as Om Prakash, accused persons present. Accused Kailash has also lodged a report at the Police Station Bighapur, at 2.15 p.m. Injured Murlidhar died in the District Hospital, Unnao on 25/4/1976 at about 8.15 p.m. On receipt of this information, the police of P.S. Kotwali made an entry to this effect and (P.W.2) Drigpal Singh, S. I. prepared the inquest report and other relevant papers Ext. ka8 and 9. (P.W.4) Ram Ratan, S.O. P.S. Bighapur, Distt Unnao, took up the investigation in this case on 28/4/1976 and after completing the same, submitted the chargesheet against the accused persons.

4. The autopsy on the dead body of deceased Murlidhar was conducted by Dr. V. K. Verma, Medical Officer, District Hospital on 26/4/1976 at about 3.30 p.m. The medical report is Ext. Ka1. The doctor found the following antemortem injuries on the dead body of deceased Murlidhar.

Ante Mortem Injuries

(1) Lacerated wound 2" x 1/2" x bone deep on left side of head 5" above the left ear.

(2) Lacerated wound 2" x 1/2" x bone deep on right side of scalp 3" above right ear.

(3) Abraded contusion 2"x 1/2" on back of upper part on left side.

5. On internal examination the doctor found the fracture of right and left side parietal bones of Murlidhar (deceased). According to the doctor the death has been caused due to shock and haemorrhage as a result of antemortem injuries. According to him the injuries could have been caused by the blunt object like lathi. However, he further stated that if the axe hit by its reverse side, then the injuries mentioned above could have also been caused. Injured Murlidhar was also medically examined when he was alive, by Dr. S. N. Dixit on 25/4/1976 at about 5.10 p.m. at P.H.C. Bighapur, District Unnao. The said injury report is Ext. ka33. Dr. S. N. Dixit also examined the injuries of injured Ashok Kumar and prepared the injury report Ext. ka32. He found the following injuries on the person of injured Ashok Kumar:

(1) Lacerated wound 3 cm. x 1/2 cm. x bone deep on the left side head 10 cm. above left ear.

(2) Contused wound 3 cm. x 1 cm. x scalp deep on the head 14 cm. above right ear.

(3) Contused wound 1 cm. x 1/2 cm. x scalp deep on right side head 11 cm. from right ear.

(4) Abrasion 2 cm. x 1/2 cm. on the right forehead 1 cm. above right eye brow outer border.

(5) Contusion 6 cm. x 2 cm. on the left arm 6 cm. above left elbow joint.

(6) Abrasion 12 cm. x 1 cm. on the left forearm

(7) Contusion 15 cm. x 1 cm. on left fore arm.

6. According to him the injuries were simple and were caused by some blunt object like lathi

7. On the other hand the accused persons denied the prosecution case and placed the counter version of the incident before the Court. It is not disputed that the accused persons as well as the witnesses are related to each other and it is also not disputed that the kurk Amin had come on the date of the incident for realisation of the "Lagan" as well as Vikas Kar. There was a dispute about realization of the amount of Vikas Kar. According to him the Amin had come on the date of the incident and demanded "Lagan" as well as "Vikas Kar" and Raj Bahadur, Brij Mohan and Murlidhar (deceased) each were liable to pay 1/3rd amount of dues. It is said that Murlidhar refused to pay the said "Vikas Kar" because he was not liable to pay the same. It is said that the accused told him that if he would not pay "Vikas Kar" and "Lagan" then his crop would be attached. According to

defence, on this altercation took place and then Murlidhar, Ashok Kumar and Anjani Kumar started assaulting the accused persons with lathi and Danda. It is said that at the said time Kailash and Om Prakash were present on the spot and they were assaulted by the deceased (Murlidhar) as well as the complainant. It is further stated that accused Atma Ram and Bihari were present at their khalihaan and Brij Mohan was lying on the cot at his door. Respondents Kailash Nath as well as Om Prakash were arrested by the police at the police station itself when they lodged a report at P.S. Bighapur on the same day at 215 p.m. Two respondents were medically examined by (P.W.5) Dr. S. N. Dixit on 25/4/1976 from 9 p.m. to 1015 p.m. The doctor proved the injury reports Ext. kha1 and kha2. According to doctor, Kailash received two contusions and one swelling, whereas Om Prakash received one lacerated wound.

8. The prosecution in support of its case examined eight witnesses. Out of them, (P.W.1) is the eyewitness. (P.W.3) Dr. V. K. Verma conducted the autopsy and proved the postmortem report Ext. ka12. (P.W.2) Drigpal Singh, S.I. prepared the inquest report and proved the relevant papers Ext. ka7 to ka11. (P.W.4) Ram Ratan. S.O. at P.S. Bighapur who conducted the investigation of this case from 28/4/1976 till the submission of the chargesheet. P.W. 5 Dr. S. N. Dixit, Medical Officer, P.H.C. Bighapur, examined the injuries of Murlidhar (deceased) when he was alive as well as the complainant and the accused persons. (P.W.6) Suraj Pal Singh, S. I., P. S. Bighapur conducted the initial investigation of this case. (P.W.7) Ambika Prasad the Ward Boy of District Hospital, Unnao stated that the articles brought by the constable were sealed in his presence. (P.W.8) Fateh Bahadur Singh, brought the dead body of deceased Murlidhar to mortuary for postmortem examination.

9. The learned Sessions Judge after considering the evidence on the record came to the conclusion that the prosecution had failed to prove the guilt of the respondents beyond reasonable doubt and thereafter, he acquitted the accused persons giving benefit of doubt. The State of U.P. aggrieved by the said judgment and order filed the present criminal appeal before this Court.

10. We have heard the learned Counsel for the State as well as for the respondents and have also perused the records.

11. The learned Sessions Judge while acquitting the accused persons recorded a finding that the sole testimony of (P.W.2) Ashok Kumar was not worth to be believable. He further pointed out that there was a discrepancy in the medical as well as oral evidence because according to the prosecution case, the deceased was assaulted by the "Axe" as well as lathi but the doctor did not find any incised wound on the dead body of deceased Murlidhar. According to doctors all the injuries of Murlidhar (deceased) were caused by blunt object. According to (P.W.1) Ashok Kumar, deceased Murlidhar was assaulted by accused Kailash Nath who was armed with an "Axe" and other three accused persons who were armed with lathis but the deceased (Murlidhar) had only three injuries in total. The learned Sessions Judge also did not believe the explanation of (P.W.1) Ashok Kumar

who stated before the trial Judge that the "Axe" was used by its reverse side. The fact that "Axe" was used by its reverse side, did not find mention in the F.I.R. or in the statements of the witnesses recorded by the Investigating Officer, under Section 161 Cr. P.C. (P.W.I) Ashok Kumar further improves the manner of assault before the Sessions Judge by introducing the fact that Bihari, accused who was shown to be empty handed in the F.I.R. had assaulted him by his shoes. The learned Sessions Judge further pointed out that the prosecution has not given any explanation about the injuries of the accused in the F.I.R. or in the statement recorded by the Investigating Officer. Before the learned Sessions Judge, (P.W.I) Ashok Kumar tried to explain the injuries of the accused persons by saying that he plied his danda in self defence causing injuries to accused Kailash Nath as well as Om Prakash. Apart from this, the prosecution has also not examined the said Amin who was present at the time of the incident. No other witness came forward to support the prosecution case except (P.W.1) Ashok Kumar who is admittedly an interested witness. On the defence side, a counter version has been given and the same is also found much more probable than the prosecution case. In these circumstances, the learned Sessions Judge took a view that the prosecution has failed to prove the guilt of the respondents beyond reasonable doubt. The learned Addl. Govt. Advocate, tried to challenge the above mentioned findings but in our opinion, the said findings are based on proper appreciation of the evidence. The learned Addl. Govt. Advocate vehemently argued that the learned Court below committed an error in not accepting the explanation that the "Axe" was used by its reverse side. According to him, it is mentioned in the F.I.R. itself that the "Axe" was used in the "marpit" and the manner of use of the said "Axe" has not been mentioned and the said manner is not necessary to be mentioned in the F.I.R. He further tried to explain the number of injuries by stating that, it appears that some of the blows given by the accused did not hit the deceased and, therefore, the deceased has received only three injuries. No doubt, the F.I.R. is not an encyclopaedia of the prosecution case but only on this ground, it cannot be said that the findings recorded by the Sessions Judge is not correct. It is not disputed that the fact of using of "Axe" by its reverse side, did not find place in the F.I.R. or in the statement under Section 161 Cr. P.C. P.W. 1 Ashok Kumar before the trial Judge stated that the "Axe" was used from its reverse side but looking into the prosecution case as a whole it cannot be said that the "Axe" was also used in the incident as alleged by the prosecution. (P.W.I) Ashok Kumar further stated that a accused Kailash Nath had given an "Axe" blow which hit him on his head but in spite of this there is no incised wound on the head of the injured. In the instant case as pointed out above, there is no other witness to support the prosecution case even the Amin whose presence is not disputed, has not been produced by the prosecution. There is sole testimony of (P.W.I) Ashok Kumar who is admittedly interested and inimical witness. Therefore, the testimony of (P.W.I) Ashok Kumar requires proper adjudication. The medical evidence also did not support the prosecution case nor any other witness came forward to support or corroborate the statement of (P.W.I) Ashok Kumar. Apart from this, the learned Sessions Judge has pointed out other several circumstances which show that the deceased party had grudge to initiate assault and the said finding cannot be said to be against the evidence, therefore, in our opinion no good

ground for interference is made out. The findings recorded by the learned Sessions Judge are based on cogent evidence and the learned Sessions Judge, has considered each and every aspect of the case.

12. In these circumstances, the present Criminal Appeal has no substance and is hereby, dismissed.