

(2003) 04 AHC CK 0225

Allahabad High Court

Case No: Criminal Appeal No. 1796 of 1980

Chiraguddin

APPELLANT

Vs

Hajimuddin alias Rafiuddin and
Others

RESPONDENT

Date of Decision: April 10, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 378

Citation: (2003) CriLJ 4106

Hon'ble Judges: U.S. Tripathi, J; D.P. Gupta, J

Bench: Division Bench

Advocate: Tapan Ghosh, for the Appellant; Mohd. Arif, A.G.A. and J.N. Dubey, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Gupta, J.

Feeling aggrieved by the order of acquittal dated 27th August, 1979, passed by the VIth Additional District and Sessions Judge, Agra, in Sessions Trial No. 459 of 1975: State v. Haji Muddan and four others, under Sections 302: 149: 148 and 147, I.P.C., P. S. Rakabganj, district Agra, complainant Chiraguddin has preferred this appeal u/s 378(4), Cr. P. C. Leave to appeal was granted by this Court vide order dated 18th August, 1980.

2. The facts giving rise to this appeal can be narrated in brief as under:

Chiraguddin, complainant (appellant), was going from his house situated in Dhulikhar to his another house in Meera Hussaini in Agra on 23rd May, 1972. On the way, he stopped at the betel shop of Gulab, situated at Mantola Tiraha, for taking "paan" (betel). It was about 10 p.m. He saw deceased Saiduddin Qureshi and Aaquil coming from the side of Ghetia Mama-Bhanja. Saiduddin and Aaquil addressing Chiraguddin said as to why he alone was taking "paan". They would also take. Then

all the three took the "paan" and proceeded towards the house of Saiduddin Qureshi towards Sadar Bhathi. When they reached near R.S. Soda Water Factory, the accused Haji Muddan, Mushiaq, Wahabuddin, Chhotey Gaewala and Badruddin (now dead), all the five, met there and surrounded Saiduddin Qureshi and rebuked him. Haji Muddan was having open knife in his hand. The four accused exhorted Haji Muddan jointly (vernacular matter omitted). Upon this, Haji Muddan stabbed Saiduddin Qureshi in his back. He fell down on the road. Chiraguddin and Aaquil raised an alarm and challenged the accused persons. On the alarm, witnesses Intezar Hussain, Khalifa Chunna, Bipin Chandra Jain, Rahim Baksh alias Lal Mohd., Anwar, Mohd. Asgar, Munshi Akhtar Hussain, Habib and Rafiq collected there. On the arrival of these witnesses, the accused went away towards Ahmadiya Hanifia lane. There was electric light and the incident was seen in that light. Chiraguddin tried to lift the injured Qureshi in his lap but being heavy he could not be lifted, and he sat down keeping Qureshi on the earth. In the meantime, Jeep of the injured Qureshi arrived and keeping the injured in the jeep Chiraguddin along with some other persons proceeded to the Emergency Ward of the hospital, but in the way Qureshi died. On reaching the hospital, the doctor declared him brought dead. From there Chiraguddin went to P. S. Kotwali and lodged a written report which was registered at 11.15, p.m. on 23-5-1972. The place of occurrence was within the jurisdiction of P.S. Rakab Ganj. Therefore, the FIR was sent from the police station Kotwali to police station Rakab Ganj. The investigation of the case was entrusted to Sub-Inspector Roop Singh, P.W. 13. Another Sub-Inspector Rishipal Singh, P.W. 5, prepared the inquest report and with necessary papers sent the dead body in sealed condition for postmortem examination at about 8.30 a.m. on 24-5-1972. On the same day, at 11.30 a.m., Dr. S. C. Gupta, P.W. 9, conducted the post mortem examination and prepared the report. As per his opinion, the time of death was about 12 hours. Rigor mortis was present in upper and lower limbs. He found the following ante-mortem injury:

1. Stab wound 1" x 2/10" x cavity deep with clean cut margins on the back of the chest left side 1" away from the spine at the level of the 6th thoracic vertebra placed obliquely (medial end being higher) between the 6th and 7th ribs.

3. On internal examination he found that corresponding to injury No. 1 there was an incised opening with clean-cut margins of 1" x 2/10" on the 6th intercostal space of, pleura. Blood was present in soft tissues. Left pleural cavity was full of partially clotted blood (two and a half pounds approximately). He further found incised cut 1/2" x 1/10" on the posterior aspect of the left lower lobe in upper part extending in the lung upward, forward, medially, upto the bronchi to the left lower lobe at the root of the lung. An incised opening 1/3" x 1/4" was present on the pulmonary artery.

4. In the opinion of the doctor, death was due to shock and haemorrhage resulting from the ante-mortem injury caused by knife.

5. P. W. 13 Roop Singh, the Investigation Officer, recorded the statements of the witnesses, prepared the site-plan and took sample and bloodstained earth from the place of occurrence and after completing the investigation prepared the charge-sheet, The charge-sheet could not be submitted to the Court as fresh investigation by the CB CID was ordered. Finally, Ramesh Pal Singh, Inspector of CB CID, investigated the case and submitted a charge-sheet on 20-8-1973 against the appellant-Chiraguddin and witness Intezar Hussain and two others, namely, Jamil and Iliyas for offences punishable under Sections 302/109: 302/114: 302/120B: 301/109, I.P.C. Being aggrieved, Chiraguddin filed the complaint in the Court of ADM(J), Agra, on 4-12-1973, alleging that the deceased Saiduddin Qureshi, Advocate, was the son of maternal uncle of the complainant. As such, they were cousin brothers. The accused Haji Muddan had patronised one Jiauddin, but on some matters they fell apart. Two or three months prior to the incident, the accused Haji Muddan got a false case registered against Jiauddin. The deceased Saiduddin, Advocate, had done pairvi of Jiauddin and obtained his bail from the Court of the Judicial Magistrate. The accused Haji Muddan did not like deceased Saiduddin doing pairvi for Jiauddin and, as such the accused Haji Muddan met the deceased Saiduddin in the morning of 23-5-1972 at about 10 a.m. in the collectorate compound, Agra, on his "basta" (seat) and threatened him with dire consequences. On 22-5-1972, brother of the deceased lodged a report against Haji Muddan. As a counter-blast. On 23-5-1972, at 10.45 a.m., Haji Ibrahim, brother of the accused Haji Muddan, lodged a report u/s 395, I.P.C. against the deceased Saiduddin, Advocate, with the allegations that he along with others had looted the factory of Haji Muddan, on coming to know about the report against himself; Sri Saiduddin Qureshi got prepared a bail application and other papers. These papers could not be filed as in the same night, i.e. on 23-5-1972, at about 10 p.m. he was done to death by Haji Muddan and others.

6. In the said Court, the prosecution examined 14 witnesses. The Court also examined Mohd. Yasin Qureshi as the Court witness. Out of them, P.W. 1 Chiraguddin, P.W. 2 Bipin Chandra Jain, P.W. 3 Akhtar Hussain, P.W. 4 Rahim Baksh alias Lala were eye-witnesses. P.W. 10 Rashiduddin was examined to prove the fact that the accused Haji Muddan extended threats to the deceased Saiduddin on the fateful day. This witness was the real brother of the deceased and was the clerk of the deceased. P.W. 9, Dr. S. C. Gupta, had conducted the postmortem examination, P.W. 13 S. I. Roop Singh, conducted the investigation. Rest of the witnesses were formal in nature.

7. The accused admitted their inter se relationship. They denied their hands in the murder. They stated that due to enmity they had been falsely implicated in the case. Chiraguddin had the motive to falsely implicate them. Chiraguddin was engaged with a girl and his engagement was broken. Later on, that girl was married with the nephew of Haji Muddan.

8. In defence the accused persons examined Ramesh Pal Singh, Inspector, CB CID, who investigated the case and submitted the charge-sheet against Chiraguddin (appellant) and three others. They further examined D.W. 2 Lala Ram in order to prove that the deceased Saiduddin Qureshi presented an application dated 23rd July, 1971, against Chiraguddin and others. D. W. 3 Kishan Swaroop was examined to prove certain papers of the file of Sessions Trial No. 43 of 1975: State v. Chiraguddin and others.

9. The trial Court after scrutinizing the evidence on record acquitted the accused persons extending them the benefit of doubt.

10. Heard Sri Tapan Ghosh, learned counsel for the appellants, Sri Mohd. Arif, learned counsel for the respondents and learned AGA for the State.

11. On behalf of the appellant, it was contended that the trial Court was not justified in extending the benefit of doubt, specifically when it found that the immediate motive for committing the murder was to Haji Muddan accused. Haji Muddan accused is a moneyed and influential person. He managed the investigation done by CB CID after winning over Shamim, the son of the deceased, and the witnesses.

12. On behalf of the respondents, it was contended that the findings recorded by the trial Court are well reasoned and based on correct appraisal and appreciation of evidence and requires no interference by this Court. It has been contended, that when there are two views equally possible, then the view taken by the trial Court cannot be brushed aside unless it is found to be perverse.

13. We have gone through the entire evidence on the record and have perused the judgment of the trial Court. In this case the date, time and place of the occurrence is not disputed, There was sufficient light and the incident could be seen in that light is also not disputed. It is to be seen whether the prosecution evidence is reliable and charges have been established and proved beyond reasonable doubt against the accused persons.

14. In this case, the witnesses Intezar Hussain, Rafiq, Khalifa Chunna and Habib did not support the case of the complainant by filing their affidavits in the Court of committing Magistrate. They have completely denied to have seen any occurrence. These witnesses were not examined in the Court. In this case, P.W. 2 Bipin Chandra, P.W. 3 Akhtar Hussain, P.W. 4 Rahim Bux and P.W. 10 Rashiduddin, who were examined in the trial Court, were not examined u/s 202(2), Cr. P. C. Bipin Chandra, Rahim Bux, Akhtar Hussain, even were not mentioned in the FIR. In this case, there is another circumstances which has been dealt with by the trial Court, that is, when Haji Muddan accused is said to be moneyed person and is an influential person so as he could get the investigation changed according to his wishes, and was in a position to win over even the son of the deceased and witnesses, then why he would carry an open knife in his hand and would stab the deceased himself in front of so many persons, moreso when his son, his nephew and his relation, who were

younger to him, were with him. The other circumstance is that it is highly unnatural that the son and nephew will command his father and uncle to stab. In this case, the trial Court has dealt with the evidence of each eye-witness. On certain vital and crucial facts their evidence is contradictory. The trial Court has also taken into consideration the factum of cancellation of the charge-sheet prepared by P.W. 13 S. I. Roop Singh and on investigation by the CB CID the complainant-appellant Chiraguddin, witnesses Intezar Hussain and two others were *prima facie* found to have committed the murder of Saiduddin. The trial Court has also taken into consideration the statements of P.W. 2 Bipin Chandra Jain and other eye-witnesses and has held their evidence not reliable. P.W. 2 Bipin Chandra Jain has stated that he saw the accused persons and the deceased Saiduddin were abusing each other and they were talking about some case. Four accused persons exhorted Haji Muddan that, "If Saiduddin is not agreeable, stab him". This version of P.W. 2 Bipin Chandra Jain is against the version of the complainant Chiraguddin, P.W. 1. According to him, five accused persons surrounded the deceased and rebuked him. Four accused persons exhorted Haji Muddan to stab him. P.W. 1 Chiraguddin did not say that the deceased Saiduddin also abused the assailants or that there was any talk about any case. This witness had further stated that at that time he did not see any witness present near the spot.

15. The trial Court has rightly taken into consideration the fact that P.W. 3 Sayed Akhtar Hussain, who was a clerk of the deceased, was not an eye-witness. He was not cited as an eye-witness in the FIR. P.W. 13, Roop Singh, Investigating Officer, has shown him as the witness of the panchayatnama. His statement was not recorded by the Investigating Officer showing him as an eyewitness. This witness was not having good vision. It has come in evidence that the vision of one of his eyes was minus ten and the other eye was also defective. The presence of this witness at S. R. Soda Water Factory was also doubtful. This witness was quite aged, of more than 70 years. This witness had shown his presence because on the fateful day when he went to the house of the deceased Saiduddin, Advocate, at about 7 p.m. he was not there. Therefore, he came to S. R. Soda Water Factory and sat with P.W. 4, Rahim Bux alias Lala till the occurrence took place. After analysing the statements we find the presence of this witness doubtful.

16. The presence of P.W. 4 Rahim Bux alias Lala was also doubtful. This witness was not named in the FIR lodged by the complainant, Chiraguddin, with the police. He has stated before the trial Court that about 3 and 1/4 years ago, Chiraguddin came to him and said that his brother had given false affidavit involving him (Chiraguddin) in the murder of the deceased Saiduddin. In fact, he was present and his brother was not present at the time of occurrence. This statement shows that this witness was later on prepared for the purpose of this case. Therefore, the trial Court had rightly found his testimony unreliable.

17. P.W. 10, Rashiduddin, who was a real brother of the deceased and was also his clerk had stated that at about 8.30 p.m. he was sitting at the house of the deceased Qureshi. Few persons came and informed that somebody had stabbed Vakil Sahib. Upon this, taking Shamim, the son of the deceased, this witness came to the place of occurrence in a jeep. This witness tried to state about the facts of the occurrence and tried to show himself as an eye-witness, but in cross-examination he said that, (vernacular matter omitted). The evidence of this witness also does not help the prosecution as he was not an eye-witness and his evidence was hearsay,

18. It is true that the immediate motive could be for Haji Muddan as a day prior to the date of the occurrence the case was registered against Haji Muddan on the report of the brother of the deceased, On the fateful day the brother of Haji Muddan lodged an FIR u/s 388, I.P.C. against deceased Saiduddin Quereshi, Advocate, and others, It Is also borne out from the evidence on record that the relations between the appellant Chiraguddin and the deceased were also not good, though apparently they were on talking terms, It was pointed out that on the fateful day a procession was passing through near the place of occurrence and the deceased was not willing to go out from his house on account of the procession that evening. It has been argued that the possibility of taking advantage of the situation Chiraguddin killed two birds by one stone could not be ruled out. He settled score with Haji Muddan on the one hand, and Saiduddin, on the other.

19. As we have found and discussed above that trial Court had rightly not placed reliance on the testimony of the eye-witness, Intezar Hussain, Rafiq, Khalifa Chunna and Habib had filed affidavits denying to have seen any occurrence in the committing Court. They were not examined before the trial Court. The witnesses, who have been examined in the trial Court were not named in the FIR lodged by the appellant with the police. Their statements were also not got recorded u/s 202, Cr. P. C. As we have mentioned above, the eye-witnesses differ in their statements on material points. The investigation done by Sub-Inspector Roop Singh on the report lodged by Chiraguddin appellant with the police was not accepted and charge-sheet was cancelled. On the fresh investigation done by the CB CID the appellant, Chiraguddin, and witness Intezar and two others were charge-sheeted for the "murder of Saiduddin Quereshi. On careful scrutiny and analysis of the entire evidence, facts and circumstances on record, we find no reason to interfere with the judgment and the order of the trial Court.

20. The appeal has no merit and is liable to be dismissed.

21. The appeal is dismissed.