
(2013) 02 AHC CK 0295

Allahabad High Court

Case No: Criminal A. No. 7549 of 2006 Connected with Cri. A. No. 197 of 2007

Arimardan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Feb. 7, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 307, 336, 34, 504

Citation: (2013) 2 ACR 2015 : (2013) 81 ALLCC 255

Hon'ble Judges: Rakesh Tiwari, J; Anil Kumar Sharma, J

Bench: Division Bench

Advocate: V.P. Srivastava, Vijay Singh Sengar, J.S.P. Sengar, Samit Gopal, J.S. Sengar, G.S. Chaturvedi, Satish Trivedi and J.S.P. Singh, for the Appellant; M.C. Tiwari and Ajay Sengar, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record. Both these appeals arise out of the judgment and order dated 30.11.2006 passed by Additional Sessions Judge/Fast Track Court No. 1, Jalaun at Orai in Session Trial No. 57 of 2001 arising out of Crime No. 48 of 2000, by which all the appellants have been convicted u/s 302/34, I.P.C. and sentenced to rigorous imprisonment for life with fine of Rs. 10,000 each and in default of payment of the fine, to further undergo simple imprisonment for six months. Appellant Arimardan has also been convicted and sentenced to undergo six months' R.I. for the offence punishable u/s 336, I.P.C. All the sentences have been directed by the court to run concurrently.

2. The appeal has been preferred on the ground that findings of the court below are not sustainable in the eyes of law being against the weight of evidence on record; that conviction and sentence of the appellants is contrary to law and sentence

awarded to the appellants is too severe. Appellants Arimardan, Munish and Yogesh are on bail whereas bail application of appellant Ram Babu was rejected and he is in jail.

3. According to the prosecution, a written report was submitted by Arvind Kumar, son of Prayag Narain, resident of village Rendher, at police station Rendher, district Jalaun, alleging that on 14.9.2000 at about 10.30 p.m. when his elder brother Surendra Kumar was present at his house in village Rendher, One Ram Sumiran, a relative of Bhagwati Prasad came there to talk about settlements in the cases pending between the family members of the accused persons and the complainant. Ram Sumiran wanted Surendra Kumar to have compromise with Bhagwati Prasad but it was refused by Surendra Singh and Ram Sumiran went back to the house of Bhagwati Prasad. After about 2-3 minutes, accused-appellants Ram Babu armed with a D.B.B.L. gun, Munesh, Yogesh armed with country made pistols and Arimardan carrying bricks came to their house hurling abuses at them. When they were asked by his brother Surendra Kumar not to abuse. Ram Babu, Munesh and Yogesh opened fire with their respective weapons and Arimardan attacked Hari Shanker injuring him with brick bats. His brother Surendra Kumar sustained fire arm injuries and uncle Hari Shanker received brick bat injuries on his left leg in this assault by the appellants. On hearing the sound of fire arms, several persons of the village arrived at the scene of the incident and on being challenged by them, the accused persons, who are resident of the same village, ran away abusing and threatening them. On the basis of the written report at police Station Rendher which is at a distance of about half kilometer from the place of occurrence, chick report was prepared after registration of the case on 14.9.2000 at 23.45 p.m. in the G.D. as Case Crime No. 48 of 2000. under Sections 307, 336 and 504, I.P.C.

4. Investigation of the case was taken up by Station Officer Ram Milan Dubey, who in presence of witnesses Devendra Pandey, son of Lalloo Ram and Madhav Swaroop Pandey son of Bhawani Shanker, resident of village Rendher, made recovery of three 12 bore empty cartridges from the place of occurrence which were sealed by the police. Another recovery memo of blood stained and plain earth in two separate boxes was made by the Investigating Officer from the place of occurrence on 15.9.2000. Injured Hari Shanker also was given chiththi mazroobi by police on 15.9.2000 but he got himself examined on 17.9.2000 when septicemia spread.

5. Injured Surendra Kumar succumbed to the injuries before reaching the hospital. Therefore, offence u/s 302, I.P.C. was added in the case crime number aforesaid. After inquest, body of Surendra Kumar was taken for postmortem examination in sealed state by C.P. 84 Jai Devi Singh and H.C. 1750 Arvind Kumar to the District Headquarter. Oral. Post-mortem on the cadaver of deceased Surendra Kumar son of Prayag Narain, was conducted by Dr. R.P. Gupta, on 15.9.2000 at 3.30 p.m. External examination of the body of the deceased revealed that he was of average built muscularity aged about 44 years and rigor mortis was present on both the

extremities and abdomen. On internal examination, the doctor found the membrane and brain pale. Referred the injuries of scalp ribs and cartilages lungs to ante-mortem injuries as detailed in the post-mortem report. Both chambers of heart were found empty. The cavity contained about 1.5 litres of clotted blood. Stomach was lacerated in which food particles found scattered in chest and abdomen. The small intestine contained semi digested food and gases whereas the large intestine contained fecal matter and gases. Gall bladder was lacerated and half full, spleen and kidney were pale and the urinary bladder was empty In the opinion of the doctor, cause of death was shock and haemorrhage as a result of ante-mortem injuries, which were reported as under:

1. Contusion 5 cm. x 1.5 cm. on left side face.
2. Contusion 3 cm. x 2 cm. on mid forehead.
3. Lacerated wound 4 cm. x 1.5 cm. x scalp deep right parietal area of head 4 cm. above right ear.
4. Fire arm wound of Entry: 2 cm. x 1.5 cm. x bone deep on lower part of right arm over lateral epicycloid area, margin inverted oval in shape, clotted blood present.
5. Fire arm wound of exit: 10 cm. x 9 cm. x bone deep over cubital fossa right side.
6. Fire arm wound of entry: 2 cm. x 1.5 cm. x chest cavity deep on right side lateral chest wall 13 cm. below post axilly oval in shape. Margin inverted. Clotted blood present. 7th rib fractured.
7. Fire arm wound of exit: 2.5 cm. x 1.5 cm. x chest cavity deep on left side front of chest, margin inverted 3 cm. from left nipple at 4 O'clock position, 6th rib fractured, clotted blood present.

The doctor sent the clothes on body of the deceased in a sealed bundle alongwith another sealed envelope containing Postmortem and two sealed pieces of plastic recovered from inside the body for investigation by Forensic Science Laboratory. These items were collected by C.P. 84 Jai Devi Singh from the doctor to be sent for chemical examination. Forensic investigation was conducted by Vidhi Vigyan Prayogshala, U.P., Agra, which examined the following exhibits. 1. blood stained earth, 2. plain earth in sealed boxes. 3. pent, 4. shirt, 5. Baniyan. 6. underwear. 7. Aangochha, 8. Tikali belonging to the deceased received from post-mortem. Report of the aforesaid laboratory, revealed the following results: item No. 1-fully stained in blood, item Nos. 2 to 7 had big spots of blood, biggest spot on item No. 3 was 30 cm. Spectrometry procedure for investigation of blood was conducted on the aforesaid items which showed that human blood was present on item No. 1 to 3 and on item Nos. 4 to 7 blood was found disintegrated, therefore, their origin could not be found. On item Nos. 2 and 3 blood of Group "A" was found whereas blood on item No. 1 was not found fit for classification and coming to a result.

6. Injured Hari Shanker aged about 70 years was medically examined on 17.9.2000 by doctor Incharge, Primary Health Centre. Madavgarh, who reported the following injuries on his body:

1. Septic lacerated wound 2.5 cm. x 0.5 cm. x skin deep on austerior side of right lower leg, 1.5 cm. above the right ankle.

2. Contusion 2 cm. x 1 cm. on left foot 8 cm. below left ankle joint.

In the opinion of the doctor, injury Nos. 1 and 2 were simple in nature, cause of injuries was blunt object and its duration about two and half day old.

7. After completion of investigation, charge-sheet was submitted against the accused-appellants. The case was committed to the court of session where charges were framed against the accused-appellants under Sections 302/34, 336 and 504, I.P.C. which they denied and claimed to be tried.

8. In order to prove its case, the prosecution examined Arvind Kumar-informant P.W. 1, Dr. R.P. Gupta P.W. 2, Head Constable Ram Milan P.W. 3, Dr. Sanjay Verma P.W. 4, Constable Jai Dev Singh P.W. 5, and Constable Raghuvir Singh P.W. 6.

9. In their statement recorded u/s 313, Cr.P.C., accused-appellants stated that they have been falsely implicated in the case on account of enmity and village partibandi. Accused Munesh further stated that on the day of incident he had gone to Oral for repair of the tractor alongwith Ram Babu Pandey and others of the village. Accused appellant Arimardan also stated that on the day of incident he was at Delhi in his Bua's house. The accused-appellants also examined Parmatma Saran D.W. 1. Ashok D.W. 2, Krishna Gopal Dubey D.W. 3. Suresh Kumar D.W. 4, N.K. Bharganva D.W. 5, V.D. Pandey D.W. 6 and Ramesh Chand D.W. 7, in support of their defence plea.

10. Upon consideration of the evidence on record and hearing counsel for the parties, the trial court by the impugned judgment and order convicted and sentenced the appellants under Sections 302/34, 336 and 504, I.P.C. as stated earlier in paragraph 2 of this judgment.

11. Sri V.P. Srivastava, learned counsel for the appellants, submitted that there was no motive apparent from the F.I.R. and that P.W. 1 Arvind Kumar, the solitary witness produced by the prosecution, was not present at the place of the occurrence and that his presence there as stated by the prosecution is highly doubtful; he states that there was no source of light at the time and place of occurrence and even the presence of light has been challenged by the prosecution witnesses as well as Suresh Kumar D.W. 4. He has then referred to the site plan and submitted that it shows that no source of light was there at the place of occurrence and that the court below has overlooked the contradictions in the F.I.R., the statement of witnesses and the site plan on the issue of light. According to him, there is no whisper in the F.I.R. regarding the source of light and there was no power supply in the village at the time of incident at night. It is then submitted that accused appellants have taken

plea of alibi stating that they were not present at the place of occurrence but were elsewhere at the time of incident and hence have been falsely implicated in the case. According to him, there is no independent witness of the incident and that there was no medico legal of deceased Surendra Kumar, who died while being taken to the hospital. It is also stated that injured Hari Shanker has died and that evidence in the case started in the year 2001 whereas trial of appellant Arimardan started thereafter, therefore, evidence taken by the court earlier, cannot be used against him.

12. It is urged that Ram Das and Ram Kesh who are said to be the eyewitnesses, have not been produced as witness in court by the prosecution. The deceased was a hardened criminal as a number of criminal cases were pending against him as such any other person who had enmity might have done away with him. Counsel for the appellants then argued that there is no visible motive proved by the prosecution for the murder of Surendra Kumar (since deceased) and the appellants have been falsely implicated in the case.

13. Learned A.G.A. rebuts the arguments advanced by the counsel for the appellants saying that motive is evident from the F.I.R.; that criminal cases were pending between the parties and criminal appeal No. 19 of 2002, filed by accused-appellant Ram Babu and others, was allowed setting aside their conviction and sentence in which informant Arvind Kumar in the present case, was the opposite party No. 2. He submitted that in the case in hand, perusal of the F.I.R. shows that the incident as a matter of fact had occurred on 14.9.2000 at about 10.30 p.m. which has been witnessed by many persons of the village, therefore, motive may be in the heart and mind of the accused. It is submitted that motive in every case may not be apparent but when the factum of incident is proved by statements of eye-witnesses, the motive would pale into insignificance and question of any false implication of the accused persons in such circumstances is remote. Learned A.G.A. further submitted that considering the time consumed in arranging for tractor to take the injured to the police station, it cannot be said that F.I.R. is ante timed particularly in view of the fact that injured Surendra Kumar was declared dead by the doctor at 1.30 a.m. in intervening night of 14/15.9.2000 and the complainant again returned with the police constable alongwith "chiththi majrubi" and the body of deceased to the police station at about 5 a.m. on 15.9.2000. On the basis of report of medical officer, Madhogarh, entries was made in the G.D. and offence u/s 307 was converted into one u/s 302, I.P.C. Learned A.G.A. submits that the statement of the complainant finds support from the medical evidence and for this reason too the F.I.R. cannot be said to be ante timed. He states that it is apparent from the F.I.R. that it has been lodged promptly and is not ante timed as alleged by the appellants. Though the condition of Surendra Kumar was very serious, it is apparent from the F.I.R. that it had been lodged within one and quarter of an hour of the incident. It is argued that Arvind Kumar P.W. 1 eyewitness to the incident has stood the test of cross-examination and has not flinched from his statement in examination-in-chief

before the court wherein he has elucidated the circumstances and the manner in which the incident took place and the presence of P.W. 1 therefore, cannot be doubted.

14. He also stated that there was light from the bulb at the place of occurrence and that the injured was taken on tractor to the police station whereafter F.I.R. was lodged and the injured was taken to the hospital. It is vehemently argued by learned A.G.A. on the question of source of light raised by the counsel for the appellant that though written report does not contain any averment about light at the place of occurrence, yet the attending circumstances and the statement of complainant show that there was moon light and electric bulb was radiating light there. In the site plan also light from bulb on electric pole as well as from the bulb on the main door at "C" is shown.

15. As regards the plea of alibi, it is submitted by learned A.G.A. that from the evidence on record it is found that the plea of alibi has been found to be false by the court below, therefore, the appeal is liable to be dismissed.

16. After hearing counsel for the parties and on perusal of the record, it is apparent that source of light was there at the place of occurrence in which the eye-witness P.W. 1 had seen the incident.

17. The plea of alibi has been disbelieved by the trial court on the ground that from the records and evidence, it is not proved. Accused-appellant Yogesh in his statement u/s 313, Cr.P.C. has neither claimed himself to be at Gwalior nor in his application for bail it is stated that he was there. Moreover, no suggestion has been given to P.W. 1 by the defence counsel that accused Yogesh was at Gwalior at the relevant time, therefore, the trial court found that plea of alibi was taken by him with ulterior motive.

18. It is also clear that accused Munesh who has claimed alibi u/s 313, Cr.P.C. by stating that on the date of occurrence he was at Orai getting his tractor repaired and Ram Babu Pandey was with him but none of the accused have got examined Ram Babu in evidence who is a partisan witness. The accused persons have also not in their application for bail have anywhere stated that Munesh was at Orai nor P.W. 1 Arvind Kumar has been given any such suggestion.

19. So far as appellant Arimardan is concerned, he claimed himself to be in military service and posted at Delhi at the relevant time, but from the evidence it is apparent that there are ocular witness to the fact that he was present at the place of incident. In fact he had later on after his retirement from service, moved bail application before the court for grant of bail in the matter. D.W. 6 Vishnu Dutt Pandey and D.W. 7 Ramesh Chand Gupta were examined. D.W. 6 Vishnu Dutt Pandey is known to appellant Arimardan, who is son of accused-appellant Ram Babu. D.W. 6 has though attempted to prove the plea of alibi of the accused on the basis of copy of an affidavit but before the court he could not produce the original affidavit on the basis

of which he had stated that appellant Arimardan was with him at the time of the incident. The trial court has dealt with the evidence of defence in regard to the plea of alibi in detail and rightly found that plea of alibi could not be proved by the accused, hence no benefit could be given to them. The trial court has, therefore, rightly found from the perusal of record that accused persons had not claimed plea of alibi in their bail applications claiming themselves not to be present at the time and place of the incident, whereas from the F.I.R. as well as from the evidence produced by the prosecution, it is clear that prosecution had proved the presence of accused persons at the time and place of occurrence beyond doubt.

20. The theory of false implication propounded by the counsel for the appellants is not sustainable in the aforesaid facts and circumstances of the case. Even though there may not be independent witnesses of the incident but it cannot be said that there are no witness to the incident. If the witnesses are partisan or related, the court has to move in a cautious manner and court below has given cogent reasons for believing the prosecution version and disbelieving the defence regarding the plea of alibi and false implication. We find from record that the court below has given cogent and strong reasons for disbelieving the case of the appellants and that the prosecution has proved its case to the hilt.

21. For all the reasons stated above, we find no force in this appeal which is accordingly dismissed upholding the judgment and order dated 30.11.2006 passed by the trial court. Let a certified copy of this judgment be sent to the trial court concerned for compliance which should be reported to this Court within two months.