

(2012) 05 AHC CK 0239**Allahabad High Court****Case No:** Criminal A. No. 7804 of 2006

Ravendra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 24, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (2012) 3 ACR 2494**Hon'ble Judges:** Ashok Srivastava, J; Amar Saran, J**Bench:** Division Bench**Advocate:** Hemendra Pratap Singh, for the Appellant;**Final Decision:** Allowed**Judgement**

Amar Saran, J.

This criminal appeal has been filed against a judgment and order dated 5.11.2006 passed by the Additional Sessions Judge, Court No. 10, Ghaziabad in S.T. No. 1839 of 2003 convicting and sentencing the appellant Ravendra to imprisonment for life u/s 302, I.P.C. and a fine of Rs. 5,000. In default of payment of fine, the appellant was to further undergo six months imprisonment. Out of the fine, Rs. 3,000 was directed to be given to Smt. Brijesh as compensation. In a nutshell, the case of the prosecution was that Smt. Brijesh, P.W. 4, wife of the deceased was sleeping at her home on 13.8.2003 at 2.00-2.30 a.m. with her husband and children in Block-C, Vikas Kunj, Ghaziabad, when the appellant Ravendra came to her house and knocked at the door. Smt. Brijesh tried to dissuade her husband from opening the door at that time, but her husband told her that the person knocking was his real brother and he may have something important to say and he opened the door. The appellant was accompanied by one other person. They went upstairs and started talking to her husband. Smt. Brijesh went to the roof where she slept with her children. After some time she heard some shuffle of persons running, then she saw her Devar, the

appellant and one other person running away. She came to the room where she saw the corpse of her husband, whose neck was cut. For this act, she held her Devar and the other person responsible. Her father-in-law used to work as a gardener in the horticultural department in Delhi. He died 3-4 years earlier and in his place her Devar had got the job. Her husband had filed a case in Court that he should be given the job in place of his father. Apart from this, there was some dispute of her father-in-law's gratuity and other funds and there was enmity between the appellant and the deceased on this score as well. Smt. Brijesh got the report scribed by Sardar Yogendra Singh and lodged it at the police station Loni, at 7.15 a.m. on 13.8.2003 (Ext. Ka-4).

2. The only eye-witnesses in this case are P.W. 4, Smt. Brijesh, the wife of the deceased Mahendra Pal and P.W. 7, Km. Poonam, the daughter of the deceased.

The other witnesses in this case are P.W. 1, Charan Singh, who was a neighbour of the deceased; P.W. 2 Yogendra Singh and P.W. 3, Surendra Kumar, who were the inquest witnesses; P.W. 5, Dr. Y.P. Singhal, who conducted the post-mortem on the body of the deceased; P.W. 6, S.I. Kamal Singh, the Head Moharrir, before whom the F.I.R. was lodged and who prepared the check F.I.R.; P.W. 9, H.P. Gautam, who was the first Investigating Officer and P.W. 8, S.I. Munshi Lal, who was the second Investigating Officer, who submitted the charge-sheet in this case.

3. Four defence witnesses have also been examined in this case, who are D.W. 1, Smt. Sumarati, the mother of the appellant and the deceased; D.W. 2, Smt. Shakuntala, the sister of the deceased; D.W. 3, Ramvir Singh, neighbour of the deceased and D.W. 4, Kaley, another neighbour of the deceased.

4. In her evidence in Court P.W. 4, Smt. Brijesh, wife of the deceased, affirmed the version given by her in the F.I.R. about how the appellant Ravendra knocked at the door between 2-2.15 a.m. in the night of 13.8.2003 and asked her husband to open the door as he wanted to talk about something. In spite of her protests, her husband opened the door saying that the appellant was his real brother and he may have something important to say. On opening the door, her Devar and one other person entered the house and then they sat in a room upstairs. She did not know the name of the other person accompanying her Devar. As the appellant, his companion and the deceased started talking, she went on the other roof and slept there. On hearing the sound of people running away, she woke up at 2.50 a.m. She entered the room and found her husband dead with his neck slit and saw her Devar and companion fleeing away. Her husband, the deceased had been murdered by her Devar and his companion.

She further deposed that her father-in-law used to work in Delhi. He had died 3-4 years earlier and Ravendra had got his job in her father-in-law's place. Her husband wanted to get employment in place of his father. The funds and other money had been taken by her mother-in-law. There was a dispute between the appellant, the

deceased and their mother over the fund money of her father-in-law Prem Raj. This dispute was the cause of the murder of her husband. Her husband had filed a case against the appellant for getting the job in place of her father-in-law.

5. P.W. 7, Km. Poonam deposed that on the night in question, she was sleeping with her mother on the roof. Her uncle Ravendra and a companion were going down the stairs, which caused Poonam and her mother to wake up. She found her mother weeping as her father's neck had been cut. However, she did not see anyone cutting the neck or running away. Her mother had told her that at 2.00 a.m. her uncle Ravendra and his companion knocked at the gate. Her father asked her mother to open the gate, but she did not open the gate, but on the repeated persuasion of her father, she opened the gate. Her uncle told her mother that he wanted to talk alone with her father. Then her mother came upstairs and slept there. She woke up only when the appellant was running away with his companion. By then, her father had already been murdered. There was a dispute between her father and her uncle over getting employment in place of her grand-father, after his death.

6. P.W. 1, Charan Singh, has only disclosed that he was a neighbour of the deceased and the informant. When the murder took place, he was sleeping at his house and heard no noise. He reached the deceased Mahendra's house after a long time. He did not ask the informant as to who had killed Mahendra and she also did not disclose the appellant's name as one of the persons who had murdered the deceased.

However, this witness was declared hostile. He also denied having made any disclosure regarding the dispute between the appellant and the deceased.

P.W. 2. Jogendra Singh, was a witness of the inquest (Ext. Ka 1). He has stated that the Investigating Officer had filled up the inquest documents.

P.W. 3, Surendra Kumar, was another witness of the inquest. He has stated in Court that his signature on the inquest memo was taken at the police station.

7. P.W. 5, Dr. Y.P. Singhal, conducted the post-mortem examination at 2.30 p.m. on 13.8.2003 at the District Hospital Mortuary on the dead body of the deceased. He found the following ante-mortem injuries:

(1) Incised wound 18 cm. x bone deep x 6 cm. anterior right and left side of neck. Soft tissues, blood vessels, cervical vertebral 4th spinal cord, trachea and esophagus and other soft tissues cut. Skin on the posterior aspect of the neck was only joining head to body.

The death was caused due to hemorrhage and asphyxia due to injuries noted above.

According to the doctor, it was possible that the death had occurred half a day earlier to the time of conducting the post-mortem examination.

According to the doctor these injuries could have either been caused when the deceased was sleeping or if he was awake, then only in the situation that a number of persons were holding him or if he had been made to inhale some intoxicant, then in a condition of unconsciousness, he could have received the injury.

8. P.W. 6, Head Muharrir Kamal Singh, has deposed that on 13.8.2003 Smt. Brijesh came to the police station alongwith a written report, on the basis of which, he prepared the check F.I.R. (Ext. Ka 4) and made the relevant GD entry No. 16 at 7.15 a.m. on 13.8.2003. Two persons namely Smt. Narayan Devi and one Sardar Yogendra Singh had also come to lodge the report. There was no blood on the clothes of the informant or her two companions.

9. P.W. 9, Inspector H.P. Gautam P.S. Loni started the investigation of this case. He recorded the statement of Smt. Brijesh under 161, Cr.P.C., inspected the spot and prepared the site plan (Ext. Ka 6). He also collected the plain and blood stained scraping of the roof and also recorded the statement of Km. Poonam. He arrested the appellant from his home on 14.8.2003 and recorded his statement. He also conducted the inquest on the body of Mahendra and alongwith inquest report, he also prepared a letter for C.M.O., photo lash, challan lash and handed over the dead body in a sealed condition to Constables Devendra Kumar and Dharampal for post-mortem.

10. In his statement u/s 313, Cr.P.C. the appellant pleaded not guilty and claimed to be tried and stated that he has been falsely implicated in this case.

He examined four witnesses in defence.

11. D.W. 1, Smt. Sumarati Devi, the 80 years old mother of the deceased and the appellant, has deposed that she used to live in Vikas Kunj, Loni, with the appellant. Her husband used to work as a gardener in Delhi. Her husband had died 6-7 years prior to her evidence, i.e., 6.9.2006. On her husband's death, she received Rs. 1,16,000. Her elder son Mahendra used to live in Vikas Kunj, Loni separately. Her younger son, the appellant Ravendra had stated that he was agreeable to any terms that his elder brother, the deceased would suggest for disposal of the funds and property. As the deceased and the informant Smt. Brijesh asked for the fund money received by this witness after the death of her husband, she gave the same to Smt. Brijesh. The job was given to her younger son, the appellant Ravendra, as Mahendra had got the money left by his father, but the informant Smt. Brijesh wanted that her father-in-law's job should also be given to her husband. No quarrel had ever taken place. Whenever, she used to visit Mahendra, she found some Sardars sitting at their place. When she protested to Brijesh as to why these Sardars used to sit at her place, Brijesh stated that this was none of her business. She told this fact to Mahendra, but Mahendra replied that Smt. Brijesh did not listen to him and would quarrel whenever he objected to the Sardars visiting their place. The house of Vikas Kunj was in the name of Mahendra. Smt. Brijesh wanted to get the house sold.

She further deposed that the police had come to her house at 5.00 a.m. and taken away Ravendra with them. Ravendra had conjunctivitis those days and his eyes were tied. Smt. Brijesh had lodged the report against Ravendra to save her own skin.

12. D.W. 2. Smt. Shakuntala, sister of the deceased and the appellant disclosed that Smt. Brijesh and Mahendra used to live separately from their parents. She used to visit Mahendra's house. As the deceased Mahendra and his wife Smt. Brijesh wanted the fund money of Rs. 1,16,000 received by her mother after the death of her father Prem Raj, her mother had given the same to them in her presence. Ravendra had got the job. Smt. Brijesh had said that her husband Mahendra also wanted his father's job.

She further deposed that whenever she used to go to Mahendra's house, she found some Sardars sitting and talking with Smt. Brijesh in an unbecoming manner. When this witness objected, Smt. Brijesh quarrelled with her. When she made a complaint to her brother Mahendra about this act, he said that he was helpless as his wife did not listen to him. The character of her sister-in-law was questionable. Smt. Brijesh was trying to persuade Mahendra to sell the house and give the money to her, to which Mahendra was not agreeable. After the death of Mahendra, Smt. Brijesh had in fact sold off the house.

13. D.W. 3. Rajvir Singh has deposed that Mahendra used to live separately from his parents and Ravendra. On the night in question Smt. Brijesh had called him saying that her husband was ill and she wanted to take him to the hospital. He went to the house, but saw no light burning there. When he went upstairs, he saw that Mahendra was not ill, but he was lying dead with his neck cut. When he asked Smt. Brijesh as to how the deceased had died, then she fainted. She did not disclose the name of any accused persons. Then this witness alongwith 7-8 other persons left for home.

14. D.W. 4, Kaley has deposed that he knew Ravendra and Mahendra both. He had seen Mahendra's house. The boundary of the roof of Mahendra's house was of a man's height and could not be seen from below.

15. We have heard Shri R.L. Verma, learned counsel for the appellant and Shri Arunendra Singh, learned Additional Government Advocate for the State.

16. Learned counsel for the appellant submitted that there was no motive for committing the present murder. It was unnatural that the accused persons would get the door opened in order to be identified by the wife of the deceased. As the deceased had been murdered with a heavy cutting weapon looking to the injuries, it was surprising that the same had not been noticed by the informant. The doctor had stated that the blow on the deceased could not be caused by one person alone. No recovery has been made from the appellant, who was immediately arrested from his home. Alternatively, it was argued that the deceased might have received a single blow, which cut his neck except when he may have been sleeping. The other

accused person was never arrested.

Thus, there was no reliable evidence of this crime.

17. On the other hand, learned Additional Government Advocate argued that there was no evidence that the deceased had any other enemy and there was no reason for the false implication of the appellant at the instance of the informant. The story introduced by D.W. 1, Smt. Sumarati, the mother of the appellant and the deceased and D.W. 2, Smt. Shakuntala, the sister of the appellant and the deceased that some Sardar drivers etc. used to visit the house of the informant and the deceased would not advance the case of the defence. Two natural witnesses P.W. 4, Smt. Brijesh, wife of the deceased and P.W. 7, Km. Poonam, daughter of the deceased, who were residing in the same house have supported the prosecution case. There was a motive with the appellant for having committed the crime as there was a dispute regarding the employment which the appellant had got in place of his pre-deceased father, who had died some years earlier, as the deceased was protesting against the appellant getting the job.

18. This case essentially rests on the testimonies of the two witnesses, P.W. 4, Smt. Brijesh, wife of the deceased and P.W. 7, Poonam, the daughter of the deceased, who claim to have seen the appellant running away after committing the murder of the deceased. As these two witnesses are undoubtedly partisan witnesses being the wife and daughter of the deceased, their evidence would require to be carefully scrutinized before implicit reliance could be placed on their testimony. Also as the defence witnesses, D.W. 1 Smt. Sumarti and D.W. 2 Shakuntala mother and sister of the deceased respectively (who may have some interest in trying to save the appellant, their son/brother for this crime) and who have suggested that undesirable elements used to visit the informant Smt. Brijesh's house, which was objected to by the deceased and these witnesses, and that Smt. Brijesh had falsely implicated the appellant as she had an axe to grind against him, as he and not her husband had got the job in place of their pre-deceased father, for reaching a conclusion as to whether any weight could be attached to the defence pleas raised by D.W. 1 and D.W. 2, or the neighbours, D.W. 3 Ranvir Singh, or D.W. 4 Kaley who stated that on their visit to the house immediately after the incident, Smt. Brijesh did not disclose the identity of the accused, in such circumstances in our view whether implicit reliance can be placed on the testimonies of P.W. 4 Smt. Brijesh and P.W. 7 Km. Poonam can only be decided on a consideration of the probabilities of this case. It is well-settled that persons may tell a lie, but circumstances usually tell the truth.

19. After giving our careful consideration to the matter we are of the view that the testimony of the eye-witnesses P.W. 4 Smt. Brijesh and P.W. 7 Km. Poonam fail to inspire confidence for reaching a finding of guilt against the appellant. The reasons for our view are:

One, if the appellant had wanted to commit the murder of the deceased and had chosen the late hours of the night at about 2-3 a.m. on 12/13.8.2003 to commit this crime, there was no reason for the appellant to have got the house of the deceased opened by the deceased and his wife, the informant and to have made public his identity before committing the crime a little while later.

Two, Smt. Brijesh did not notice the appellant carrying any weapon when he entered the house of the deceased. The injury on the neck of the deceased, being an incised wound 18 cm. x 6 cm. x bone deep on the anterior aspect from the right to the left side of the neck, which had cut all the vessels underneath and the head was only jointed by the skin, could only be caused by a very heavy cutting weapon. It was impossible that the informant would not have noticed any weapon when the appellant entered the house with the same in her presence.

Three, apart from not noticing the weapon of assault her claim that she left the room when the deceased was talking with the appellant and his companion when according to her there was a dispute between the two, does not appeal to reason.

Four, the only other eye-witness P.W. 7, Km. Poonam daughter of the deceased has stated that she was sleeping on the roof when the deceased and his companion entered the house, but although she claims that when her uncle and his companion came down she woke up alongwith her mother, but in her statement recorded u/s 161. Cr.P.C. she has disclosed that her mother had woken her up and then she found that her father had been murdered. Even in her statement in Court she stated that she had not seen anyone murdering her father nor did she see anyone fleeing after committing the crime. Her mother had told her that in the night at 2.00 a.m. her uncle alongwith one other person had come and knocked at the door. Initially she refused to open the gate, but on the persuasion of her father, she opened the gate. When her father and uncle started talking, then her mother had gone upstairs and slept there. After committing the crime, when her uncle started running after committing the crime, then she and her mother had woken up. By that time her father had died. Therefore she could also not be said to be a witness who could be held to have categorically stated that she had either seen the appellant committing the crime or running away after the crime. Rather she appears to have been told about the incident by her mother, and her evidence would thus be more in the nature of hearsay.

Five, we, are thus left with only the testimony of P.W. 4, Smt. Brijesh. The defence witnesses, D.W. 1, Smt. Sumarati, the mother of the appellant and the deceased and D.W. 2. Smt. Shakuntala, the sister of the appellant and the deceased and sister-in-law of the complainant, Smt. Brijesh, have stated that on the death of Prem Raj, father of the appellant and the deceased, the gratuity and other fund money received by her had gone to the deceased, who was a property dealer and the job was given to the appellant Ravendra. Although, Prem Raj had died three years earlier, no evidence had been led in respect of the fact as to when Ravendra got the

job in place of his father, but we have reason to think that in the normal course, he would have got the employment in place of his father soon after his death. Smt. Brijesh in her examination-in-chief stated that her husband Mahendra had filed a case for preventing Ravendra from getting the job in place of his father Prem Raj, but significantly she has not given any details about any case filed by Mahendra, the deceased for questioning the employment, which was obtained by Ravendra, the appellant in place of his father. We only find that Smt. Brijesh had handed over some papers, which are marked as (Envelop Ext. 1, 4B/6 Ext. 2, 4B/7, Ext. 3 and 4B/8, Ext. 4) to the Investigating Officer, P.W. 8, Munshi Lal. Even though these papers were not properly proved, but the perusal of the said documents suggests that the same were fabricated for the purpose of this case.

Ext. 2 was an unsigned letter of threat to the deceased that if he tried to put a spanner in the job, then he would be murdered.

Ext. 3 was a letter dated 19.3.2000 to the Chauki In-charge, purportedly by the deceased Mahendra that some persons had beaten him.

Ext. 4 was a letter purportedly written by Smt. Sumarati, wife of late Premraj, which bore her thumb impression and it was addressed to the Additional Director, Horticulture Department Urban area. This letter mentions that her husband was working in the department as gardener. He died on 26.12.1999. All the money, which was left to her by her husband was snatched by her son Ravendra, who threw her out of the house and he was causing hindrance in the payment of pension and gratuity. She was residing with her elder son Mahendra and that she should be paid pension and gratuity amount.

Significantly, Smt. Brijesh and the prosecution did not even have the courage to put this letter to the witness Smt. Sumarati when she was examined as D.W. 1. Rather this letter appears to contain wrong facts that Smt. Sumarati was residing with her elder son Mahendra, the deceased at some stage after the death of her husband Premraj. No suggestion was even given to this witness that she had ever resided with her elder son Mahendra. Although she used to visit his place on some occasions, but Mahendra used to reside separately with his wife and his own family, and the witness was residing with her younger son, the appellant. These facts go to suggest that the said letter and other unproved documents were fabricated by Smt. Brijesh to try and develop some kind of motive for this crime. If the appellant had acquired the job soon after the death of his father, and there is no concrete material to indicate that the deceased, who was a property dealer had filed any case or taken any step for challenging the appointment of his brother to his father's job, then the appellant would hardly have any motive to commit his brother's murder. Rather Smt. Brijesh, P.W. 1 who was resentful of the appellant and not her husband getting his father's job, as her husband had got his father's cash inheritance, could have been interested in falsely implicating the appellant for this crime. Some criticisms have also been levelled against the informant for inviting some persons of

questionable antecedents to her place which was said to be resented to by the deceased and her mother-in-law and sister-in-law. Admittedly she also sold off the deceased's house after his death.

Six, another inexplicable circumstance in the prosecution story is how the witnesses would not have heard the deceased cry out before he was struck the fatal blow with the heavy cutting weapon as clearly he was not struck the blow when he was lying on the bed. No blood was collected from the bed on which the deceased had earlier been sleeping, but blood was collected from the roof scrapings, which clearly suggests that the deceased was not assaulted when he was sleeping. In this connection P.W. 5 Dr. Y.P. Singhal himself admits in his cross-examination that looking to the nature of the injuries it could have either been caused when the deceased was sleeping or if he was awake, only when a number of persons were holding him or if he had been made to inhale some intoxicant, then in a condition of unconsciousness, he could have received the fatal injury. But the prosecution case was that neither was the deceased sleeping, nor was he struck a surprise blow when he was unaware nor there were a number of persons who caught hold of the deceased for facilitating the blow. In these circumstances we fail to understand why the two witnesses did not hear any sound when the deceased may have been caught hold of and given a blow by the assailant when he would have raised a cry if he was awake, and the witnesses would only wake up, when they heard the appellant and his single companion shuffling down the stairs.

Seven, P.W. 7, Km. Poonam has admitted that the appellant was caught hold of the very next day and he never tried to run away. Not absconding and remaining present for being caught hold of the very next day even though he had committed the crime in the night after meeting the informant P.W. 4 Smt. Brijesh is an additional reason for doubting his involvement in this crime.

Eight, no recovery was made from this accused after his arrest including the weapon of assault.

Nine, the deceased being a property dealer, there could have been other persons who may have murdered him. However it is not for the defence to explain how the deceased had died.

In view of what has been indicated hereinabove we are satisfied that the prosecution has not been able to establish its case against the appellant beyond reasonable doubt. He is, therefore, acquitted of all the charges for which he was convicted. He is in jail. He shall be set at liberty forthwith unless wanted in connection with some other case. Appeal allowed.