Jata Shanker alias Awadh Bihari and Others Vs State of U.P.

Court: Allahabad High Court

Date of Decision: July 7, 1998

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 107, 116, 313
Penal Code, 1860 (IPC) â€" Section 302, 307, 34

Citation: (1999) CriLJ 3009

Hon'ble Judges: N.S. Gupta, J; Girdhar Malviya, J

Bench: Division Bench

Advocate: V.C. Tiwary, for the Appellant; Dy. Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

N.S. Gupta, J.
This criminal appeal is directed against the judgment and order dated 21-4-1980 passed by Sri N.S. Gahlaut, the then Vlth

Additional District and Sessions Judge, Allahabad, convicting the accused appellants -- Jata Shankar alias Awadh Behari, Gopinath alias Challar

and Shyam Sharkar u/s 302/34, I.P.C. and sentencing each of them to undergo life imprisonment.

2. The prosecution story briefly stated is as follows:

The accused-appellants -- Jata Shankar alias Behari, Gopinath alias Jhallar and Shyam Shankar are all residents of village Masika P.S. Naini

District Allahabad. Appellants Jata Shankar and Shyam Shankar were cousin brothers and Gopinath was the nephew of Shyam Shankar. In this

way they were closely related to each other. The deceased Ram Chandra was also a resident of this very village. Some time before the incident of

this case, on 15-11 -78, one Trivedi Prasad of this village was murdered. Shish Mani, Ram Sanjiwan and Jeevan Lal were arrayed as accused

persons in that murder case. Shish Mani was the nephew of Ram Chandra deceased of this case. Ram Sanjiwan and Jeevan Lal were cousin

brothers of the deceased, therefore, deceased Ram Chandra was doing Pairavi in the said murder case on behalf of Shishrnani, Ram Sanjiwan and

Jeevan Lal. He also filed an affidavit in connection with the bail of the accused persons of the said case. Triveni Prasad deceased of the said

murder case was younger brother of accused appellant Shyam Shankar. Jata Shankar bore enmity with the deceased Ram Chandra because he

was doing Pairavi on behalf of Shishmani and others, the alleged murderers of Triveni Prasad. Smt. Rajpati Devi, who was aunt of Shishmani had

lodged an F.I.R. on 11-12-1978 against the accused appellants Jata Shankar and Gopinath with the allegations that Jata Shankar and Gopinath

and Kesheo son of Jata Shankar had set fire to her house. The deceased Ram Chandra was cited as a prosecution witness of fact in the said case.

The accused appellants, therefore, bore enmity with the deceased.

3. The prosecution claimed that on 9-1-1979 at about 4 p.m. the deceased Ram Chandra along with Ram Lal PW 1, Krishna Murari PW 2 and

Rajmani were sitting in front of the shop of Chhotey Lal Baniya situate in village Masika. The accused appellants Jata Shankar, Gopinath and

Shyam Shankar came there. Jata Shankar and Gopinath were armed with Farsas and Shyam Shankar was armed with Lathi. All these three

accused appellants exhorted to kill the deceased. Hearing the exhortation of the accused appellants, the deceased Ram Chandra tried to run away

after getting up from the cot, on which he was sitting. Jata Shankar and Gopinath attacked the deceased by means of Farsas. On receiving the

injuries, the deceased fell down on the ground. Thereafter the accused appellant Jata Shankar again assaulted the deceased by means of Farsa on

his right parietal region. Shyam Shankar appellant remained standing by the side of these two assailants saying that if anybody dared to come, he

too shall be killed. Ram Lalak PW 1, Krishna Murari PW 2 and Raj Narain raised an alarm and attracted other persons. The accused persons ran

away. Krishna Murari PW 2, Ram Sanjiwan, Mishra Lal and Raj Narain took the deceased to Swarup Rani Nehru Hospital at Allahabad where

the deceased was examined by Dr. R.P. Singh PW 4 at about 6.30 p.m. Dr. R.P. Singh found the following injuries on the person of the deceased

who was alive till then. It appears that soon thereafter at about 6.55 p.m. the deceased succumbed to his injuries at Swarup Rani Nehru Hospital.

Injuries

1. Incised wound on the right side of face 6"" x 1"" bone deep extending from lobule of right ear to mid of chin, fresh bleeding present.

2. Incised wound on the right parietal region 2"" x 1/2"" bone deep 5"" above the right ear fresh bleeding present.

3. Incised wound on the right side of neck 1"" x 1/2"" muscle deep, fresh bleeding present 5 1/2"" below the right ear.

4. In the opinion of the doctor, the patient was unconscious and was kept under observation. The injuries were caused by sharp edged weapon

and the duration was fresh.

5. A written report Ex. Ka.1 regarding this incident was lodged by Ram Lalak PW 1 at P.S. Naini District Allahabad on 9-1-1979 at about 4

a.m., on the basis of which Crime Case No. 15 u/s 307, I.P.C. was registered and investigation followed. The Police Station Naini lay at a

distance of 5 1/2 miles from the scene of occurrence. S.I. Nageswar Singh PW 6 who was then working as sub-inspector at PW Naini District

Allahabad took up the investigation of the case. He immediately recorded the statement of Ram Lalak right at the police station and thereafter

rushed to the scene of occurrence. He inspected the scene of occurrence in village Masika on the pointing out of the complainant and recovered

bloodstained and simple earth as also bloodstained bag Exts. 7, 8 and 9 from the scene of occurrence. He prepared a detailed site plan Ex. Ka7

of the scene of occurrence. He recorded the statement of other witnesses and remained busy with the investigation of the case till 11 p.m. On the

next day, he received an information about the death of the deceased. He thereafter, went to Swarup Rani Nehru Hospital Allahabad at about

1.15 p.m. He inspected the dead body of the deceased and prepared inquest report Ex. Ka9 about the same. After preparing necessary papers,

he sent the dead body of the deceased along with constable Chandra Bhushan PW 8 and Babu Lal for post mortem examination. After completing

the investigation, S.I. Nageshwar Singh submitted chargesheet against the accused appellants.

6. After committal of the case to the Court of Sessions, the accused appellants were charged u/s 302/34, I.P.C. for committing murder of the

deceased on 9-1-1979. The accused appellants pleaded not guilty and claimed trial. They all pleaded that they were falsely implicated in this case

due to enmity. Although the accused persons in their examination before the Court below stated to adduce their evidence in their defence but no

oral evidence in defence was produced. They, however, filed an extract of Khatauni Ex. Kha 1 and Kha 2 as also a report Chalani u/s 107/116,

Cr.P.C. Ex . Kha-3 and Kha 4 and a copy of the affidavit of Ram Chandra deceased which was filed by him for cancellation of bail in Criminal

Misc. Bail Application No. 3696 of 76 before the High Court, which was Ex. Kha-5, A certified copy of the statement of one Prakash Chandra in

a case State v. Hinch Prasad and Ors. of the Court of Sri Ravi Varma, Special Judicial Magistrate was also filed which was Ex. Kha-6.

7. The prosecution in support of its case examined as many as 9 witnesses, out of whom PW 1 Ram Lalak, PW 2 Krishna Murari were witnesses

of fact. Dr. R.V. Singh PW 3 was the Medical Officer of Moti Lal Nehru Hospital, Allahabad who conducted the autopsy on the dead body of the

deceased on 10-1-1979 and found the position as under :

8. The deceased was aged about 52 years, and moderately built. Rigor mortis had started passing from upper extremities, present in lower

extremities. There was no sign of decomposition. Probable time of death since expired on 9-1-79 at 6.55.

Anti mortem injuries

1. Incised wound right side face 6"" x 1"" x bone underneath is sharply cut. Wound was extending from the lobule of right ear to its middle of chin.

2. Incised wound on the right parietal region placed in AP.and slightly oblique direction 2"" x Vz"" scalp deep. 5"" above the right ear.

3. Incised wound placed transversely on the right side of neck 1"" x Vi"" muscle deep and 5W below the right ear.

9. On internal examination , Dr. Singh found that the abdomen was empty. Small intestines were empty. Large intestines were full. Dr. R.B. Singh

took out the clothes from the dead body of the deceased, which consisted of a Baniyan Ex. 1, Sweater Ex. 2, full Sweater Ex. 3, Sadri Ex. 4,

Lungi Ex. 5, Janeoo Ex. 6 which were all stained with blood. He opined that the deceased had died due to shock and haemorrhage, which resulted

from the injury No. 1. He further opined that the said injury was sufficient in the ordinary course of nature to cause death. The said injury was

caused by some sharp-edged weapon like Farsa. He clearly stated that if after fall of the deceased, the assailants assaulted him by means of Farsa,

in that event injury No. 1 could have been caused. PW 4 Dr. R.P. Singh was the Medical Officer, who had initially examined the injured at Swarup

Rani Nehru Hospital on 9-1-1979 when the injured was alive and found the injuries on his person as noted above. PW 5 Ram Sumer Pandey was

the formal witness, who stated that the investigating officer had recovered bloodstained and simple earth as also a bag from the scene of

occurrence, and had prepared recovery memos about the same. He stated that all these things were taken up by the investigating officer in his

possession from in front of the shop of ChhoteyLal Baniya of Village Masika. PW 7 Head Mohrrir Umanath Tiwari proved the chik report and

various G.D. entries. PW 8 constable Chandra Bhushan was the formal witness who took the dead body of the deceased from Swarup Rani

Nehru Hospital for mortuary for postmortem examination. PW 9 S.B.Lal was the clerk of MotiLal Nehru Hospital Allahabad who stated on

affidavit that three sealed articles with specimen seals were brought before him by constable Deonath Singh and were sent to Chemical examiner.

PW 6 Nageshwar Singh S.I. was the investigating officer of the case.

10. After needful trial into the matter, the learned trial Judge convicted and sentenced the accused appellants as aforesaid; hence this appeal.

11. When the appeal was called out for hearing Sri A.K. Awasthy, holding brief on behalf of Sri V.C. Tiwari, Senior Counsel, stated that the

appellants have not turned up to give instructions to Sri Tiwari. We pointed out to the learned Counsel for the appellants that in criminal matters, a

counsel once engaged cannot refuse to argue out that appeal for want of proper instructions. Thereafter with the help of Sri A.K. Awasthy, brief

holder of the learned Counsel for the appellants Sri V.C. Tiwari and A.G.A. Sri A.K. Dwivedi, we have gone through the record of the case and

considered their arguments on merits.

12. Finding

It is clearly proved by the medical evidence of two doctors, namely, Dr. R.P. Singh PW 4 and Dr. R.V. Singh PW 3 that incised wound on right

side face 6"" x 1"" x bone underneath sharply cut, and extending from the lobule of right ear to its middle of chin, and incised wound on the right

parietal region placed in A.P. and slightly oblique direction 2"" x 1/2 "" x scalp deep, 5"" above the right ear and incised wound placed transversely

on the right side of neck 1"" x 1/2"" muscle deep and 5 1/2"" below the right ear were found on the person of the deceased . All these injuries were

bleeding at the time of the medical examination by Dr. R.P. Singh at 6.30 p.m. on 9-1-1979 when the deceased was alive. It has also come in the

evidence of Dr. R.V. Singh PW 3 who conducted autopsy on the dead body of the deceased that the deceased had died at 6.55 p.m. on 9-1-

1979 because of the aforesaid injuries. All these injuries according to the medical evidence of Dr. R.V. Singh, were caused by means of a sharp-

edged weapon like Farsa and were sufficient in the ordinary course of nature to cause death.

13. It is clearly established from the ocular evidence of Ram Lalak PW 1 who is cousin brother of the deceased that a few months before the date

of occurrence, on 15-11 -1978 one Triveni Prasad Tiwari of his village was murdered in which Shishmani, Ram Sanjiwan and Jeevan Lal were

arrayed as accused persons. Shishmani was cousin brother of the deceased Ram Chandra Shukla. Ram Sanjiwan and Jeevan Lal were cousin

brothers of the deceased Ram Chandra. Ram Chandra Shukla deceased of this case was doing Pairavi on behalf of the accused persons of that

case, namely, Shishmani, etc. in connection with bail application, the deceased Ram Chandra Shukla had also filed an affidavit in support of the bail

application in the court of K.P. Asthana, the then Additional Sessions Judge, Allahabad. It has also been averred by Ram Lalak that Rajpati Devi

was the real aunt of Shishmani accused of that murder case. The house of Rajpati Devi was set ablaze on 12-11-1978 in which Jata Shankar alias

Awadh Behari, Gopinath alias Jhallar, two accused appellants of this case, and Kesheo son of Jata Shankar, accused appellant, were arrayed as

accused persons. The deceased Ram Chandra Shukla was cited as an eye witness of the said case. Therefore, the accused persons bore enmity

with the deceased on that score. The accused appellants in their examination u/s 313, Cr.P.C. have admitted that Jata Shankar and Shyam

Shankar were cousin brothers (Mausera Bhai) and Gopinath was the nephew of accused Shyam Shanker. They have also admitted that on 15-11-

1978, Triveni Prasad of their village was murdered and in that murder case, Shishmani Ram Sanjiwan and Jeewan Lal were arrayed as accused

persons. When according to the statement of Ram Lalak, Shishmani, Ram Sanjiwan and JeevanLal were closely related as cousin brothers and

nephew of the deceased Ram Chandra Shukla, it was natural for Ram Chandra Shukla deceased to have made Pairokari on their behalf when they

were involved in the murder case of Triveni Prasad. Triveni Prasad was the younger brother of the accused appellant Shyam Shankar. That apart,

when accused appellant Jata Shankar and Gopinath as also Kesheo son of Jata Shankar had set ablaze the house of Smt. Rajpati Devi, aunt of

Shishmani accused and when the deceased was cited as a witness of fact in the said case of committing mischief by setting fire as against accused

appellants Gopinath and Jata Shankar as also the son of Jata Shankar it was natural for the accused appellants to have felt sore and inimical

towards the deceased of this case and to take law into their own hands to eliminate the deceased. Thus the accused appellants having well-

founded motive and grudge against the deceased, it is probable for us to believe that on the fateful date of the incident when they saw the deceased

relaxing and chit chatting with his uncle Ram Lalak, Krishna Murari and others sitting in front of ChhoteyLal Baniya of their village, they took the

law into their hands and in furtherance of their common intention to kill the deceased, Jata Shankar and Gopinath armed themselves with Farsas

respectively and Shyam Shankar armed himself with Lathi went to eliminate the deceased.

14. It has been clearly averred by Ram Lalak PW 1 that when all the three accused-appellants came there, they exhorted to kill the deceased.

They rather exhorted ""Aaj Sala mauke se mil gaya hai. Ham longon ke khilaf mulzimon ki taraf se parivavi karta hai aur ek halafnamabhi diya hai,

ese mar dalo, rasta saf hojayc"". This exhortation made by all the three accused appellants clearly goes to prove their guilty intention to eliminate the

deceased altogether. It has further come in the evidence of PW 1 Ram Lalak and Krishna Murari PW 2 that when after hearing these exhortations,

the deceased Ram Chandra got up from Charpai and tried to run way, the accused appellants Jata Shankar and Gopinath assaulted the deceased

by means of their respective Farsas and when after receiving Farsa injury, the deceased fell down, thereafter the accused appellant Jata Shankar

assaulted the deceased by means of Farsa and caused injury on the right parietal bone. The accused appellant Shyam Shankar remained standing

watching the whole affair with his lalthi in his hand and giving threats that if anybody would come for rescue of the deceased, he too shall be

eliminated and done to death. Thus the guilt of the accused appellants stands fully proved beyond any shadow of doubt by the direct evidence of

Ram Lalak PW 1 and Krishna Murari PW 2 who have given an eyewitness account of the occurrence and whose eye-witness account finds full

corroboration by the medical evidence of Dr. R.V. Singh PW 3 on record.

15. Sri A.K. Awasthy, learned Counsel for the appellants reiterated the arguments of the defence as were made before the Court below. We now

proceed to discuss them as under:--

It has been argued on behalf of the accused appellants that independent witnesses of the occurrence which could be ChhoteyLal Baniya, owner of

the shop in front of which the incident had happened and other independent witnesses of the locality have not been produced and, therefore, the

testimony of the two witnesses of fact, namely, Ram Lakak PW 1 and Krishna Murari PW 2 ought not to have been believed, by the Court below

No doubt, the occurrence had taken place in broad daylight in a thickly populated area out the fact remains that no independent witness would like

to undertake the enmity of the desperate criminals like the accused appellants.

16. It was next argued that the place of occurrence has not been properly established. The investigating officer has not shown the place from

where he had recovered the blood, as such the place of occurrence is not established. This argument too is without any force, inasmuch as that

PW 5 Ram Sumer who is a witness of the recovery of the bloodstained earth from the scene of occurrence has clearly stated before the Court that

the investigating officer had taken bloodstained earth and simple earth from near the shop of Chhotey Lal Baniya. That apart, the report of the

chemical examiner Ex.Ka20 too fully proves that the bloodstains were found on the earth, which was sent to him for examination. The mere fact

that the investigating officer failed to show in his site plan that particular place from where he had recovered the blood is, therefore, not considered

fatal to the case of the prosecution.

17. The mere fact that PW 1 Ram Lalak was a relation of the deceased is not a good ground to discard the testimony when the same is fully

corroborated by the testimony of Krishna Murari PW 2 who had no love-lost with the deceased. The time of the occurrence being of afternoon at

about 4 p.m. it is probable for us to believe that the villagers like Rani Lalak PW 1 and Krishna Murari PW 2 and the deceased were relaxing and

chit chatting together. Since the accused appellants had a well founded motive against the deceased, it appears that they took the deceased

unaware and intentionally committed his murder. The occurrence being of PW and the F.I.R. having been lodged at 5.30 p.m. the same day, that is

just after 1 1/2 hours, the police station being 5 1/2 miles from the place of occurrence, the F.I.R. was quite prompt and the meticulous details

having been mentioned in the said F.I.R., the oral testimony of PW 1 Ram Lalak and PW 2 Krishna Murari was quite, truthful and was rightly

believed by the Court below.

18. Under the circumstances, we fully agree with the findings of fact recorded by the Court below regarding guilt of the accused appellants

punishable u/s 302/34, I.P.C.

19. We accordingly find no force in this appeal, which is hereby dismissed. It appears that the accused appellants are on bail. Their bail is

cancelled and the Chief Judicial Magistrate concerned is directed to get the accused appellants arrested and commit them to prison to serve out the

sentence according to law.

20. Let a copy of this judgment along with the record of the case be sent to the Court below for needful compliance and report within two months.