

(2007) 06 AHC CK 0064

Allahabad High Court

Case No: None

Budhi, Nathu and Puttam

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: June 28, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Hon'ble Judges: H.L. Gokhale, C.J; R.C. Deepak, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

H.L. Gokhale, C.J.

This criminal appeal seeks to challenge the judgment and order dated 31st of May, 1982, rendered by the Vth Additional District & Sessions Judge, Bareilly, in Sessions Trial No. 279 of 1981. The appellants have been convicted for the murder of one Chandra Sen u/s 302 read with Section 34 of I.P.C, as well as for destroying the evidence u/s 201 of I.P.C. The learned Sessions Judge has sentenced them for an imprisonment for life for the offences established u/s 302/34 of I.P.C. and four years R.I. for an offence punishable u/s 201 of I.P.C. The case of the prosecution, as disclosed in the FIR registered by the brother of the deceased, i.e., one Nathu Lal, is principally as follows.

2. The wife of the deceased Chandra Sen one Sukhdei was supposed to be a lady of not good character and appellants No. 1 and 2 were stated to have illicit relation with her. In fact, some six months before, it was seen that appellant No. 1 had entered the house of Chandra Sen in the night and was seen running from there. Thereafter a village Panchayat was organised, where he pleaded guilty, therefore, the complaint was not registered, but appellant No. 1 and the second appellant had threatened the deceased that when the opportunity will be available, they will kill

him.

3. The FIR records that on 6th of April, 1981, the complainant Nathu Lal along with his brother were going to their agricultural field at about 4:00 A.M. in the early morning. The deceased was walking ahead and the complainant was following him at some distance. The complainant was carrying a torch and the deceased was carrying a plough. As soon as they reached a road adjoining the field of the deceased, the three appellants who were hidden in an adjoining grove came out. They encircled the deceased and started beating him. The complainant used the torch light and shouted when he saw that appellant No. 1-Budhi had a spear, appellant No. 2-Nathu had a Kanta (a sharp edged weapon) and appellant No. 3-Puttan had a lathi and they all were beating the deceased, The complainant raised his voice which led the appellant No. 2, to say that let us kill Chandrasen quickly and put him; in a gunny bag and destroy the dead body. They threatened the complainant that if he came nearby, he will also be killed. Thereafter they killed the deceased, put him in a gunny bag and tied it with a rope.

4. The complainant was shocked and retreated to his village raising his voice. Some of the villagers heard his shout and three of them, i.e., one Budhi son of Bhawani, one Ram Das also son of Bhawani and one Janki Prasad son of Mool Chandra came out with lathies and torches. The complainant informed them that his brother Chandra Sen has been killed by the appellants and that they are about to destroy his body. All of them went to the place where the incident is supposed to have occurred. They found that the plough of the complainant's brother was lying on the land and his buffaloes were grazing and the body of the deceased was not seen anywhere.

5. All of them went in search of the body of the deceased as well as of the accused. First they went towards the village river, but could not trace him, if therefore, they went across the river to a nearby pond when they saw the three accused throwing the body in the water of the pond on the banks thereof.

6. The complainant and his colleagues ran behind the accused by using the torches, but they could not found them. They, undoubtedly, recognised the accused throwing the body. Thereafter they took out the body from the water of the pond and went to the village and informed the village Chowkidar as to what had happened.

7. The complaint was registered at about 9:15 A.M. and the Station House Officer has given the details about the steps taken by him in his deposition. This was one Jaipal Singh (PW-4). He has deposed in the court that as stated by the complainant, the FIR was registered. Thereafter he took his Constables to the banks of the river Vaigul and then to the pond on the other side thereof, where they saw the body of Chandra Sen lying on one side. A number of villagers as well as village Chowkidar were present there. He prepared the Panchnama and took down the names of the witnesses. He noted the clothes on the body of the deceased, i.e., Dhoti, one

Sweater, Baniyan, white shirt and a coat, which were all taken in possession. The gunny bag and a rope were also taken in possession. All those items were sealed. He identified those of items in Court. Thereafter the body was sent for post-mortem. He prepared the photo-lash and challan-lash from the place of occurrence where the body was found. Thereafter, the police had inspected the place of occurrence and sketched the plan of that particular place. He found bloodstained soil on a particular place. Bloodstained soil as well as other soil were collected in separate containers. They are marked as Exts. 9 and 10 and he identified these exhibits in Court. Thereafter he recorded the statements of the witnesses, who had gone along with the complainant to that particular place, i.e., one Ram Das and Janki Prasad (PW-2 and PW-3). He took in possession the torches, which they were carrying. He noted that the torches were in good condition. The torches were returned by recording a Supurdnama.

8. After completing the necessary investigation, the charge sheet was filed. When the trial proceeded, all the accused pleaded not guilty. The complainant has deposed to the facts as disclosed in the FIR. There are couple of discrepancies between the FIR and the deposition. One is that, in the FIR, he has stated that three accused encircled Chandra Sen, whereas in his deposition, he has stated that appellant No. 2-Nathu caught hold of the deceased-Chandra Sen. In the FIR, he has stated that all three of them used the weapons, which were attributed to them, namely, accused Nathu used Kanta, accused Budhi used spear and accused Puttan used lathi. In his deposition, he has not stated that accused Nathu used Kanta, though he has stated, as stated above, that Naihu caught hold of the deceased and the other two accused used weapons that they were carrying.

9. In the cross-examination of the complainant-PW-1, there is hardly anything which otherwise can be said to be differing from whatever was stated either in the FIR or in the examination in chief. It was suggested to him that the deceased was killed in the night because of the past enmity. That is the last suggestion given to the complainant in his cross-examination, which of course, he has denied, but there is nothing particular whatsoever emerging from this cross-examination beyond giving this suggestion.

10. The two other significant witnesses Ram Das-PW-2 and Janki Prasad-PW-3, have corroborated the later part of the incident, namely, that when the complainant came to the village early in the morning and informed that his brother had been killed, they rushed to the place of occurrence along with the complainant and other villagers. They first tried to search at the place where the incident is supposed to have occurred. Thereafter all of them ran towards the village river, but could not find the deceased. So they went across the river to a pond and there they saw the three accused throwing a gunny bag into the water of the pond. They recognised three accused in the light of the torch and tried to catch them, but the accused ran away. These two witnesses along with complainant-PW-1 returned to the place

where the gunny bag was removed out of the water of the pond containing the body of the deceased. Thereafter, a complaint was registered by the complainant and the statements of the two witnesses were recorded by the police officer. PW-2 had confirmed that a Village Panchayat was held earlier, though he did not remember the names of the Sarpanch. In that Panchayat, there were allegations against the wife of Chandra Sen-deceased. It was suggested to this witness that the wife of the deceased has illicit relation with one Rameshwar, with whom she, as stated, ran away on the next day of the incident. The fact that Rameshwar and the wife of the deceased were not traceable is accepted by this witness.

11. One Dr, Bbargava was examined as PW-5. He had conducted the post mortem. Me pointed out that on the body of the deceased, there were nine punctured wounds, two lacerated wounds, one abraded contusion, one contusion and one abrasion. He stated that all those injuries were quite sufficient for the death of the person concerned. Some undigested food to the tune of 100 gms. was found in the stomach of the deceased and, therefore, the doctor accepted that some three hours before, the deceased might have had some food, The doctor has accepted that there was no wound on the body of the deceased that could be attributed to the sharp side of Kanta. Therefore, it was submitted on behalf of the defence counsel that the Kanta was not used, which was supposed to have been used by the accused No. 2-Nathu. As far as all other injuries were concerned, they were clearly attributable either to the spear or to the lathi. Thus, the 14 injuries are as follows:

1. Lacerated wound 1 cm x 1 cm x scalp deep on middle of head.
2. Punctured wound 2 cm x 1 cm behind right ear.
3. punctured wounds in area of 7 cm x 5 cm on right side back of the Head.
4. Lacerated wound 3 cm x 1 cm x bone deep on the right temporal region just above right eye brow.
5. Punctured wound 1 cm x 5 cm x skin deep & muscle deep on right side chest 2 cm below right nipple.
6. Punctured wound 1 cm x 5 cm x muscle deep on right side subcostal margin 4 cm below inj. No. (5).
7. Punctured wound 5 cm x 5 cm x muscle deep on the right side of chest.
8. Punctured wound 5 cm x 5 cm x skin on right side of chest.
9. Punctured wound 1 cm x 5 cm on left subcostal margin 12 cm below left nipple.
10. Abd. Contusion 4 cm x 2 cm on top of left shoulder.
11. Contusion 10 cm x 6 cm on dorsum of left hand.

12. Punctured wound 1 cm x 1 cm x 2 cm deep on outer aspect of right buttock upper part.

13. Punctured wound 1 cm x 1 cm x 1.5 cm on outer side of right thigh.

14. Abrasion 5 cm x 5 cm (sic) aspect of right thigh 12 cm Ant. sup. iliac spine.

12. The accused gave a statement in writing in their defence u/s 313 of Cr.P.C. In that statement, two alternative stories were sought to be placed. One was that the wife of the deceased had illicit relation with one Rameshwar, and that she has ran away with Rameshwar, and the second was that the deceased had sold his land to some third person, but the sale deed was not executed and, therefore, there was some controversy. Two defence witnesses were examined. One was, one Janki Prasad, son of Gokil Prasad (DW-1), who has deposed to a limited extent that on the same day, he had seen that the body of the deceased was removed from the pond and that the body was in a gunny bag. But there is nothing much in his deposition beyond this. He has further stated that the wife of the deceased ran away with Rameshwar. The other defence witness is Suresh Pal Singh, who is supposed to be a Lekhpal of that particular Tehsil. He has deposed to the fact that there was some land deal of the deceased and that the sale deed was not executed.

13. The learned Judge of the trial Court examined the entire evidence and came to the conclusion that the offence u/s 302 read with Section 34 of I.P.C. was established so also u/s 201 of I.P.C. He, therefore, held them guilty and sentenced them, as pointed out above.

14. Mr. D.P. Singh, learned Counsel for the appellants, emphasized the two contradictions in the deposition of the PW-1 -complainant, that in the FIR, he has stated that all of them encircled the deceased, whereas in the deposition, he has stated that accused No. 2-Nathu held the deceased by hand. He has emphasized the fact that whereas in the FIR, the complainant stated that accused No. 2-Nathu used Kanta (a sharp edged weapon), he did not say so in the deposition. He emphasized the fact that no injury could be attributed to Kanta and, therefore, the presence of accused No. 2-Nathu, was doubtful and for that, the entire evidence should be disbelieved. As stated above, he emphasized these two alternative theories also that because of some dispute I concerning land, some other person, or possibly, Rameshwar himself has done it, with whom the wife of the deceased allegedly had illicit relation.

15. We have gone through the evidence and considered the submission of the learned Counsel for the appellants. It has clearly come on record that the body of the deceased tied in a gunny bag was recovered from the village pond and that is, in fact, confirmed by defence witness No. 1. Therefore, there cannot be any dispute to that part of the incident. The fact that the deceased had died due to assault by a sharp edged weapon, like spear and also by use of lathi, gets established by the injuries received on the body of the deceased, as seen from the post mortem report.

It has also been established that the bloodstained soil had been collected at the spot, which was shown by the complainant and PW-2 and PW-3. At the particular place in the field, the plough was collected and the body of the deceased was subsequently collected and recovered from the pond.

16. The question is, as to whether the complaint should be disbelieved merely because of the two discrepancies, which are sought to be emphasized by the learned defence counsel. The first discrepancy is that the complainant has stated in the FIR that accused No. 2-Nathu and other two accused encircled the deceased, but in the deposition, it has been stated that accused No. 2-Nathu caught hold of the deceased. In our view, it is not a serious departure from what is stated in the FIR. In any case, it establishes the presence of accused No. 2-Nathu.

17. As far as not mentioning the use of Kanta in the deposition is concerned, it is to be noted that though the complainant saw the happening from a nearby spot, the incident had occurred at about 4:00 A.M. early in the morning. The F.I.R. was registered at about 9:15 A.M., wherein the complainant has recorded that he saw the three accused committing the offence. When he deposed in the Court, he had corrected himself by saying that as far as accused No. 2-Nathu is concerned, he caught hold of the deceased, but has not attributed use of any weapon by accused No. 2-Nathu. Thus it is seen that on re-collection, he did not attribute the use of the weapon by Nathu-accused No. 2. The deceased and the complainant were brothers. They had come to their agricultural field. It was quite natural for them to come together for their agricultural operation as stated by the complainant. It is not disputed that a Panchayat had been held and in that Panchayat, accused No. 1-Budhi, who allegedly had illicit relation with the wife of the deceased, had also begged pardon. On this background, if the complainant narrates the incident, which he has seen, in a crystal clear manner firstly in the FIR and later on in his deposition with a minor correction with respect to use of weapon by accused No. 2-Nathu, in our opinion, that is certainly not a factor, which could have been read to throwaway the complaint.

18. As far as the second part of the incident is concerned, namely destroying the body of the deceased by putting it into a pond, this is clearly established from the statement made by DW-1 himself and two witnesses, PW-2 and PW-3, who have stated that in the torch light, they saw the three accused throwing the gunny bag containing the body. It is another matter that the accused ran away and surrendered in the Court later on. There is no reason to disbelieve PW-2 and PW-3, who have seen the second part of the offence. No enmity or ill will is attributed to them.

19. As far as the minor departures from the FIR are concerned, Mr. Verma, learned Counsel appearing for the State, drew our attention to the judgment of the Apex Court in *Om Prakash alias Raja v. State of Uttaranchal*, reported at 2003 SCC 412, wherein the Apex Court has laid down that the FIR need not contain exhaustive

account of the incident. The absence of some particulars or stating something else in the deposition could not be called to be improvement over the version in the FIR. In para 10 of the said Judgment, the Apex Court has clarified this position by stating that a person overtaken, by grief at the particular incident cannot be expected to give better particulars. The possibility of a complainant inventing a story within a couple of hours to implicate the accused, is absolutely ruled out.

20. With respect to the aspect that there is only one eye witness to the first part of the offence viz. murder, the learned Counsel for the State, drew our attention to another judgment of the Apex Court in *Munshi Prasad v. State of Bihar* reported at (XLIII) 2001 ACC 1001, wherein in para-12, the Apex Court has emphasized that the quality of the evidence is material, and not the quantity,

21. Looking to the totality of the circumstances, in our view, the charge that was levelled against the accused was established by the prosecution in the trial Court beyond any doubt and the learned Sessions Judge was correct at coming to his conclusion. We do not find that there is any reason to depart therefrom, or from the punishment that has been imposed.

22. In the circumstances, the appeal is dismissed. The accused have been on bail during the trial and also in the appeal. Their bail bonds are cancelled and sureties are discharged. They are directed to be taken into custody to serve out their sentences.

23. Let a copy of this order be sent to the Chief Judicial Magistrate concerned, to take appropriate action.