

(2000) 04 AHC CK 0141

Allahabad High Court

Case No: Criminal Appeal No. 2122 of 1980

Udho and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 22, 2000**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2000) CriLJ 3839**Hon'ble Judges:** U.S. Tripathi, J; R.R.K. Trivedi, J**Bench:** Division Bench**Advocate:** P.K. Bisaria, N.K. Saxena, S.B. Singh, R.K. Gupta and G.S. Chaturvedi, for the Appellant; A.G.A., for the Respondent**Final Decision:** Allowed

Judgement

U.S. Tripathi, J.

This appeal has been preferred against the judgment and order dated 20-9-198Q passed by 5th Additional Sessions Judge, Hamirpur in Sessions Trial No. 259 of 1979 convicting the appellants Udho and his son Mathura u/s 302 read with Section 34, I.P.C. and sentencing them to undergo imprisonment for life.

2. The prosecution case, briefly narrated, was that appellant Udho was real brother of Govind, father of Babulal (PW 1) and Ballu, father of Nathu Ram (PW 2). Smt. Genda Rani (25) deceased was the wife of Nathu Ram (PW 2). Mathura appellant is the son of Udho appellant. There was some dispute regarding agricultural land in between the appellants and Nathu Ram (PW 2), Udho appellant wanted to grab the land of Nathu Ram (PW 2) and he had also taken possession over the entire land of Nathu Ram and Govind, father of Babu Lal (PW 1). When Nathu Ram demanded his land from Udho appellant he used to threat to kill him. Quarrel often took place between the deceased arid wife of Udho appellant. Prior to three days of occurrence again a quarrel had taken place between Genda Rani deceased , the wife of Udho

appellant and the latter had told that the deceased would get everything settled within three days.

3. In the afternoon of 11-10-1979 Nathu Ram (PW 2) and his wife Genda Rani deceased had gone to Kachhar near the Bhairo Nala of village Parehha Kachhar, P.S. Jaria, District Hamirpur to collect grass. At about 5.00 p.m. they were scrapping grass on the mend of their Juar field. Babu Lal (PW 1) was also scrapping grass near them. In the mean time appellant Udho, armed with a Kulhari and appellant Mathura armed with pharsa, came there. Observing them Nathu Ram (PW 2) and Genda Rani deceased started running. Udho appellant asked Mathura to catch them hold. While Smt. Genda Rani deceased was inside the Nala Udho and, Mathura appellants started inflicting injuries on her with pharsa and Kulhari. Nathu Ram (PW 2) and Babu Lal (PW 1) raised alarm but the appellants after killing Genda Rani ran away towards village. Nathu Ram (PW 2) and Babu Lal (PW 1) came near the deceased and found her dead. Thereafter, they came to their house, arranged bullock cart and went to P.S. Jaria where Nathu Ram (PW 2) lodged an oral report (Ext. Ka 9) at 00.30 hrs. Chik report (Ext. Ka 9) was prepared by Head Moharir Lala Ram who made an endorsement of the same at G.D. report (Ext. Ka 10) and registered a case against the appellants u/s 302, IPC.

4. The investigation of the case was taken up by Sri Shaukat Ali (PW 4) the then Sub Inspector, P.S. Jaria. He reached the spot On 12-10-1979 at 6.00 a.m. appointed punchas and conducted inquest of the dead body of the deceased and prepared inquest report (Ext. Ka 2) and others relevant papers (Ext. Ka 3 and Ka 4). He took out the clothes from the body of the deceased and prepared recovery memo (Ext. Ka 5). He sealed the dead body and handed over to constable Mohar Lal (PW 5) and Raj Narain for escorting it to the mortuary. The Investigating Officer interrogated Babu Lal (PW 1) and Nathu Ram (PW 2) on the spot. He inspected the place of occurrence and prepared site plan (Ext. Ka 6). The I.O. also took into possession blood stained and simple earth from the spot, sealed it in separate containers and prepared recovery memos (Ext. Ka 7 and Ka 8). He also interrogated the witnesses of inquest and searched the accused but they were not available.

5. Autopsy on the dead body of the deceased was conducted on 13-10-1979 at 2.30 p.m. by Dr. A.K. Srivastava (PW 3) who found incised wounds, abrasions and contusion on the person of deceased and cause of death due to haemorrhage, as a result of ante mortem injuries. The Doctor prepared post mortem report (Ex.Ka 1).

6. The remaining investigation of the case was conducted by Sri Lal Bahadur Verma who on completion of investigation submitted charge sheet (Ext. Ka 11) against the appellants.

7. The prosecution in support of its case examined Babu Lal (PW 1), Nathu Ram (PW 2), Dr. A.K. Srivastava (PW 3), Shaukat Ali, I.O. (PW 4) constable Mohar Lal (PW 5) and Constable Jawahar Lal (PW 6) . Babu Lal (PW 1) and Nathu Ram (PW 2) were

witnesses of fact while evidence of remaining witnesses was formal in nature. The appellants did not adduce any evidence.

8. The learned Additional Sessions Judge on considering the evidence of the prosecution held that prosecution had successfully proved the guilt of the appellants and accordingly convicted and sentenced them as mentioned above.

9. We have heard Sri G.S. Chaturvedi, learned counsel for the appellants and the learned A.G.A. and have gone through the evidence on record.

10. Dr. A.K. Srivastava (PW 3) who conducted autopsy on the dead body of the deceased found that the deceased was aged about 25 years and had died two days ago. There were following ante mortem injuries on her person :-

1. Incised wound 17 cm x 4 cm on left side of face, extending from left angle of mouth to left side of neck. Fracture of lower jaw of left side. Clots present.

2. Incised wound 17 cm x 3 cm on left side of face, extending from left angle of mouth to left side of neck. Fracture of lower jaw of left side and overlapping injury No. 1. Clots present.

3. Contusion 7 cm x 3 cm in size on the occipital region. Congestion present on cutting.

4. Incised wound 16.5 cm x 1 cm x skin deep on back side aspect of left shoulder joint. Clots present.

5. Incised wound 9 cm x 6 cm x skin deep, just below injury No. 4. Congestion present, on cutting.

6. Abrasion 5 cm x 1.2 cm on right side of chin. Congestion present, on cutting.

7. Abrasion 3 cm x 1 cm on right wrist joint on inner aspect, congestion present on cutting.

11. On internal examination the Doctor found membrane slightly congested. Brain was soft and pulpy. Pleura, right lung and left lung were slightly congested. Stomach and small intestine were empty and large intestine full. The cause of death was due to haemorrhage.

12. Nathu Ram (P.W.2) stated that the appellants had taken possession over his land and when he demanded back his land, they became annoyed. But in his cross-examination he stated that ancestral land was partitioned and he got 1/3rd share. In consolidation operation separate chaks were allotted to him, Udho and Govind Dass. The above chaks were allotted with their consent and all the three brothers were cultivating their own chaks. He further stated that Sumer, brother of his grandfather had 8 bighas chak out land, which he had given to Udho. He and Govind Das filed objection before A.C.O. and appeal before S.O.C., but lost. He had no enmity with the appellants and no quarrel had taken place between them within

two and half years. It is true that the witness stated that prior to three days of the occurrence quarrel had taken place between the deceased and wife of Udho, appellant. But according to evidence of the witness, appellants had no strong motive to commit the murder of the deceased, as quarrel between two ladies was not of serious nature.

13. On the manner of occurrence and complicity of the appellants in the murder of the deceased, the prosecution had relied on testimony of Babu Lal (P.W. 1) and Nathu Ram (P.W.2). It is to be considered whether the prosecution had successfully proved the guilt of the appellants.

14. Babu Lal (P.W. 1) had not supported the prosecution case and according to his evidence he had not seen the murder of the deceased and came to know about it at 8 p.m. Therefore, his testimony is of no avail. There remains sole testimony of Nathu Ram (P.W.2) the husband of the deceased. The law regarding admissibility of testimony of single witness is settled and the guilt of an accused person may be proved even by testimony of a single witness.

15. The Supreme Court in the case of [Vadivelu Thevar Vs. The State of Madras](#), categorised the oral testimony of a single witness which are as below :-

(1) Wholly reliable, (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable and further held that in the first category of proof, the Court should have no difficulty in coming to its conclusion either way - It may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of inter-estedness, incompetence or subordination. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

16. In view of the above settled law we have to consider whether the sole witness Nathu Ram (P.W.2) is wholly reliable, wholly unreliable or neither wholly reliable nor wholly unreliable.

17. Nathu Ram (P.W.2) stated that at the time of occurrence he and his wife Smt. Genda Rani, deceased were scrapping grass on the mend of their Juar field situated towards north of Bhairo nala. In his cross-examination he stated that his wife was scrapping grass with a Khurpi and had also taken a chaddar for collecting grass. She had scrapped one bundle of grass and had tied it in a chaddar. He was also having Khurpi and a net for collecting grass. That he had also scrapped one bundle grass. On arrival of appellants he and his wife started running leaving Khurpi and bundle of grass on the spot and the I.O. had taken into possession the above articles. But the I.O. stated that he did not find above things on the spot. There is no explanation from the side of prosecution as to how the above articles i.e. Khurpi and bundles of grass were removed from the spot.

18. Nathu Ram (P.W.2) further stated that when the appellants came near his Juar field where he and the deceased were scrapping grass, both started running towards village. He managed to cross the nala but the deceased was surrounded by the appellants and he was observing from a distance of 40 paces that appellants were inflicting Kulhari and Pharsa blows on the deceased. His above conduct appears highly improbable as he did not attempt to save his wife and in case he had attempted to save his wife he must have sustained some sort of injuries. It appears that in order to explain the absence of injuries on his person the witness developed a story that he ran ahead and crossed the nala.

19. According to evidence of Nathu Ram (P.W.2) Udho appellant was inflicting Kulhari blows and Mathura appellant was inflicting Pharsa blows on the deceased. The medical evidence shows that the deceased had sustained four incised wounds of the dimensions of (1) 17 cm x 4 cm. (2) 17 cm x 3 cm. (3) 16.5 cm x 1 cm and (4) 9 cm x 6 cm. The dimensions of above incised wounds show that all were caused by one weapon. No doubt dimension of injury Nos. 5 was 9 cm x 6 cm but the above dimension differed from injuries Nos. 1, 2 and 4 because it was on bonny part of left shoulder joint. The difference in the dimension was due to its seat i.e. part of the body which it hit and not due to weapon. Thus, it is clear that all the incised wounds were caused by one person and not by two persons as stated by Nathu Ram (P.W.2).

20. From the above material discrepancies in the evidence of Nathu Ram (P.W.2) his presence on the spot becomes doubtful and he cannot be treated as wholly reliable witness. In case his evidence does not fall in second category, he may be treated in third category and corroboration of his testimony was required to base conviction of the appellants. But there is no corroboration of his testimony either by direct, circumstantial or medical evidence. The circumstances of the case and medical evidence do not corroborate the testimony of the witness and in these circumstances we are of the view that the sole testimony of Nathu Ram (P.W.2) was not sufficient to base the conviction of the appellants.

21. The learned Sessions Judge, thus, erred in placing reliance on the sole testimony of the Nathu Ram (P.W.2). There being no reliable evidence on record, the appellants were wrongly convicted. The appeal, therefore, succeeds.

22. The appeal is, accordingly, allowed. Conviction and sentence of the appellants u/s 302 read with Section 34, I.P.C. is set aside and they are acquitted of the said offence. The appellants are on bail granted by this Court. Their bail bonds are cancelled and sureties are discharged. They need not surrender.