(2003) 2 ACR 1125

Allahabad High Court

Case No: Criminal Appeal No. 1193 of 1998

Ram Chandra (in Jail)	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision: Feb. 20, 2003

Acts Referred:

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

Citation: (2003) 2 ACR 1125

Hon'ble Judges: M.C. Jain, J; K.N. Ojha, J

Bench: Division Bench

Advocate: P.C. Srivastava, Samit Gopal, Amicus Curiae, R.C. Maurya and Siddharth Shukla, for the Appellant; Shekhar Yadav, A.G.A., for the Respondent

Judgement

K.N. Ojha, J.

This appeal has been preferred against order of conviction and sentence dated 6.5.1998, passed by learned IVth Additional Sessions Judge, Gorakhpur, in S.T. No. 133 of 1996, State v. Ram Chandra, by which Ram Chandra has been convicted u/s 302, I.P.C. and has been sentenced to undergo life imprisonment.

2. We have heard Sri Samit Gopal, learned amicus curiae, for the Appellant, learned A.G.A. Sri Shekhar Yadav and have also gone through record. The judgment is being delivered on merit.

3. The occurrence is said to have taken place in the night of 7/8.10.1995, between 2.30 and 3.00 a.m. in Parmeshwar Pur hamlet of Nawapar, police station Chiluatal, district Gorakhpur, which is a place about 8 km. from the police station. F.I.R. was lodged by Bhual against the Appellant on 8.10.1995 at 6.30 a.m.

4. According to prosecution, Bhual, informant, is resident of village Parmeshwar Pur, police station Chiluatal, district Gorakhpur. Deceased Basudeo, aged about 12 years, was his only son. Appellant is the son-in-law of informant Bhual. Appellant used to visit the residence of his father-in-law Bhual while Basudeo did not like it. Appellant went to the residence of Bhual on 7.10.1995 in the evening, took meal there and he along with deceased Basudeo went to neighbouring village Jeetpur to enjoy video. Chandra Bhan, Bhagwat, Deena Nath, Ram Samujh of village Parmeshwar Pur also had gone there to see video. After seeing video, these four witnesses were coming back through Balapar Tikariya road to their village. When they reached the grove of Jeetpur market in the night of 7/8.10.1995 at about 2.30 or 3.00 a.m. they heard the shrieks of the deceased who was raising alarm, "Bachao, Bachao". These witnesses reached the spot flashing light of their torches. When they saw that Appellant started to run away from the place, the witnesses chased and apprehended Ram Chandra at some distance and they came back to the boy, who was raising alarm. They found that he was the boy, namely,. Basudeo of their village and his neck was tied with gamchcha. Basudeo had died. The witnesses brought the Appellant to Bhual, father-in-law of the Appellant, Bhual found that his son was killed by the Appellant. He lodged F.I.R. at the police station in the following morning of 8.10.1995 at 6.30 a.m.

5. Post-mortem examination on the dead body of Basudeo, aged about 12 years was done by Dr. O. N. Gupta in the mortuary of Gorakhpur and following ante-mortem injury was found:

(1) Contusion 6 cm. - 4 cm. on the front of Neck middle on cutting Haemotoma present under skin and muscles. Hyod bone was fractured. In the opinion of the doctor, Basudeo died due to asphyxia as a result of throttling.

6. The Investigating Officer reached the spot on the same day, prepared site-plan, recorded the statement of the witnesses u/s 161, Cr. P.C., prepared inquest report and recovered gamchcha on 18.10.1995. He recovered torch also on 25.11.1995 and after completing the investigation submitted charge-sheet u/s 302, I.P.C. against the Appellant.

7. Prosecution examined P.W. 1 Bhual, informant, and father-in-law of the Appellant and father of the deceased, P.W. 2 eye-witness Bhagwat, P.W. 3 eye-witness Chandra Bhan, P.W. 4 eye-witness Dina Nath, P.W. 5 eye-witness Ram Samujh, P.W. 6 Head Constable Ram Briksh, who prepared chick report, P.W. 7 Jokhan Prasad, scribe of the F.I.R., P.W. 8 Dr. O. N. Gupta, who performed autopsy on the dead body of Basudeo and P.W. 9 Nagesh Pratap Singh, Police Sub-Inspector, who after completing the investigation submitted the charge sheet.

8. The accused Appellant Ram Chandra has denied the offence being committed by him and it is alleged that he has been falsely implicated in the case due to malice.

9. Accused examined D.W. 1 Hiraman, who has stated that he also belongs to the village of Bhual and when Bhual started to weep in the night of 7/8.10.1995, he reached his door and after him witnesses Ram Samujh, Dina Nath and Chandra Bhan reached there. He has also stated that on suspicion, Appellant Ram Chandra has been involved in this case.

10. A perusal of the record shows that F.I.R. has been lodged by father-in-law against the Appellant accused, who is his son-in-law. Though it has been submitted from the side of the accused-Appellant that due to malice, Appellant has been involved in this case but there is nothing on record to show that informant Bhual, who is father-in-law of Appellant, was nursing bad blood with the Appellant on the date of occurrence. P.W. 1 Bhual has specifically stated that Appellant is his son-in-law, Appellant used to visit his residence, used to take meal and sleep there also. Appellant was known to P.W. 2 Bhagwat, P.W. 3 Chandra Bhan, P.W. 4 Dina Nath and P.W. 5 Ram Samujh, who are residents of village Parmeshwar Pur hamlet of Nawapur, the village where informant lives. Since the Appellant used to visit the residence of Bhual, therefore, these persons who were of the same village, were knowing Appellant since before the occurrence. If the informant had any malice with the Appellant, the Appellant could not have been in the habit of visiting the residence of Appellant Bhual. There is nothing on record from which it may be inferred that Bhual was nursing bad blood with Appellant. Therefore, this contention is not maintainable that due to ill-will, malice or enmity, father-in-law Bhual has falsely involved Appellant Ram Chandra in this crime. Ordinarily father-in-law will not lodge F.I.R. against his son-in-law, but when he is confirmed in his views that his only son aged about 12 years has been killed by his son-in-law, it is very difficult to bear the pain of the death of his son and avoid lodging of F.I.R. Therefore, F.I.R. was lodged by father-in-law and the statement of father-in-law P.W. 1 Bhual deserves to be believed that Appellant wrapped the neck of Basudeo while coming after seeing video in the night of 7/8.10.1995 when they were on the way and when the informant went there, he found that his son Basudeo was lying dead and his neck was tied with gumchcha, which was wrapped around the neck of the deceased.

11. Four eye-witnesses Bhagwat, Chandra Bhan, Dina Nath and Ram Samujh were coming after seeing the video. Their presence on the spot is natural. They have no enmity with the Appellant. Their statement is consistent that the Appellant was arrested by them while he was running away, at some distance from the dead body of Basudeo. Statements of these natural witnesses cannot be disbelieved that it was Appellant, who wrapped the neck of Basudeo with gumchcha so tightly and pressed it so hardly that Basudeo died. Post-mortem examination report supports the ocular testimony of these witnesses. Hence also, there is sufficient evidence to conclude that it was the Appellant who committed murder of Basudeo.

12. Question is as to why the Appellant, who has been brother-in-law of Basudeo, committed his murder. Evidence is on record that Bhual had only one son. Appellant used to visit the residence of Bhual being son-in-law. Bhual has two other daughters, one of his son-in-laws has already died and another daughter is still unmarried. Therefore,

circumstances show that Appellant was interested that Basudeo should not be there in his way as hurdle for enjoying the property of Bhual and living like his son. This was the greed which inspired him to commit this crime. A greed has no end. A greedy person can cause harm to another upto any extent whether he may be relative, friend or any other person of the society. Thus, the motive for committing the murder of Basudeo is proved.

13. Learned amicus curiae Sri Samit Gopal, advocate, has submitted that there is inordinate delay in lodging the F.I.R. and has placed reliance on the statement of D.W. 1 Hiraman, who has stated that when he reached the door of Bhual, he was weeping, and after him Ram Samujh, Dina Nath and Chandra Bhan witnesses reached the spot. Hiraman has admitted in his cross-examination that the Appellant used to visit the residence of Bhual, therefore, he knows Ram Chandra. He has also admitted that video was being displayed in village Karahiya. He has further admitted that he was neither present on the spot at the time of occurrence nor did he go there. Therefore, his statement that eye-witnesses of this case were not present on the spot and did not apprehend Ram Chandra Appellant while he was running away, cannot be believed. Murder was committed in the night at about 2.30 or 3.00 a.m. on 7/8.10.1995. The place of occurrence is about 8 Km. from the police station Chiluatal, district Gorakhpur. When eye-witnesses reached the door of Bhual, they informed that his only son was killed by his son-in-law. It was quite natural that complainant, his father-in-law, would not have lodged F.I.R. merely on the information of the witnesses. He had first to verify the death of Basudeo. When he reached and found that his son had died and there was no other person, who had any enmity relating to property or otherwise for killing Basudeo, Bhual believed that what was stated by the witnesses was correct and his son Basudeo was killed by the Appellant. Then, he got F.I.R. written and lodged at the police station in the following morning at 6.30 a.m. It cannot be believed that father-in-law will make deliberation and consultation for falsely implicating his son-in-law. Therefore, in our opinion, the F.I.R. does not suffer from any deliberation, consultation or any inordinate delay rather it contains correct facts of the incident.

14. Learned amicus curiae has further submitted that torch was recovered about one month after the occurrence. Thus, there is inordinate delay in recovery of torch and there was no source of light. Even if it would be taken that the torch was not recovered, still the victim was returning with the Appellant, his brother-in-law, the victim raised alarm, the witnesses of the same village, who had no enmity with the Appellant, were also returning on the same path after seeing video, they chased the Appellant and arrested him. The Appellant had not to runaway from the place, if some other persons would have wrapped the neck of Basudeo and killed him. When the Appellant was arrested by four eye-witnesses, whether there was any torch light or not, there is sufficient evidence to conclude that it was no other person but the Appellant, who committed the murder of Basudeo.

15. Learned amicus curiae has also argued that the alarm raised by Basudeo could not be heard from the distance of 50 bighas. The circumstances cannot be ignored that it was

not a place of city where there is sound of vehicles and other activities of city life. It was a solitary place of village area. The time was between 2.30 and 3.00 a.m. Therefore, it was very convenient to hear the alarm which was being raised from the distance of about 50 bighas as is stated by the witnesses.

16. It is also submitted by the learned amicus curiae that Bhual has only one bigha land. His wife is alive while the Appellant has six and seven bighas of land and, therefore, Appellant had no motive to kill him. Evidence shows that Basudeo was the only son of Bhual. If he did not remain alive, Appellant, who used to visit the residence of Bhual, was in a position to permanently live there and enjoy his property in addition to his paternal property. Besides it, Bhual has betel shop and the Appellant would have been able to sit on betel shop also, in case he would have been successful in saying that some unknown person killed Basudeo on the way in the night while coming to the residence of the informant. Therefore, the Appellant in whose heart there was deep embedded greed had motive to commit murder of Basudeo.

17. We have gone through the judgment of learned Additional Sessions Judge. We subscribe to the view expressed in it that the Appellant did commit murder of Basudeo aged about 12 years in order to be substituted in his place so that he may inherit the whole property of the informant Bhual.

18. Therefore, the appeal is dismissed. Appellant Ram Chandra is in jail. He shall serve out the sentence of life imprisonment awarded to him.

19. Sri Samit Gopal, learned amicus curiae is entitled for Rs. 1,000 (rupees one thousand) as his fee for sincerely conducting the case for the Appellant.

20. Let a copy of this judgment along with record be sent down to the trial court for compliance and to report to this Court within two months from today.