
(2004) 12 AHC CK 0214

Allahabad High Court

Case No: Criminal Appeal No. 1733 of 1981

Jagannath alias
Chinkan, Molhoo and
Chhote Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Dec. 13, 2004

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302, 34

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

Bench: Division Bench

Advocate: P.N. Misra, Sanjiv Ratna and Ainakshi Sharma, for the Appellant; Praveen Shukla and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

M.C. Jain, J.

The appellants Jagannath alias Chinkan and his two sons Molahu and Chhote Lal were tried before IV Additional Sessions Judge, Basti in S.T. No. 214 of 1978 for the double murder of Smt. Sampatti and her daughter Shobhawati aged about 8-10 years. They came to be convicted by the judgment and order dated 28.7.1981 u/s 302 I.P.C. read with Section 34 I.P.C. with sentence of life imprisonment and u/s 201 I.P.C. with a sentence of two years" rigorous imprisonment. Jagannath alias Chinkan died during the pendency of the appeal and the same abated in respect of him under order dated 5.4.2004. Presently, this Appellate Court is concerned, only with remaining two appellants Molahu and Chhote Lal.

2. The incident took place in between the night of 19/20.4.1978 at about 11.30 P.M. in village Manpur, Police Station Dhebarua, District Basti and the report by oral narration was made the same night by Sita Nai PW 1 (not eye-witness). The distance of the Police Station from the place of occurrence was about four miles.

3. The prosecution case as surfacing during trial was as follows: Thaloo, Udit, Sukai, Jhinkoo and Jagannath alias Chinkan (appellant) were real brothers, Jhinkoo was issueless. Others had their families. Thaloo died leaving behind his son Ram Lakhan, the husband of the deceased Sampatti. Ram Lakhan had died some years before the incident leaving behind his widowed wife Sampatti and two daughters Guneshwari and deceased Shobhawati. Guneshwari was married during the lifetime of Ram Lakhan. Shobhawati was unmarried and was murdered with her mother in this incident. After the death of Ram Lakhan, the deceased Jagannath alias Chinkan used to cultivate her (Sampatti's) land, giving to her some share in the agricultural produce. Sampatti had settled the marriage of her daughter Shobhawati with the son of Shobha PW 2. Tilak ceremony was to be observed on 20.4.1978. Settlement of this marriage was disliked by the accused-appellants. They never wanted Smt. Sampatti to marry her daughter with the son of Shobha as that was to result in her land going out of their grip. They tried to dissuade Sampatti from marrying Shobhawati with the son of Shobha but she did not agree. They were, therefore, annoyed with Sampatti and had also threatened her of her life. In between the fateful night, Sampatti and Shobhawati were sleeping on one and same cot in front of their east faced house. About 11.30 P.M. three accused-appellants came there. Chhote Lal was armed with Gadasa. The two unfortunate victims Sampatti and Shobhawati were caught hold of by Jagannath and Molahu and rendered immobile. Hearing some sort of noise of Sampatti and Shobhawati, the eye-witnesses Shobha PW 2, Sri Niwas PW 3, Ram Surat PW 4 and Paras rushed to their house. They saw Jagannath and Molahu pressing Sampatti and Shobhawati on the cot and Chhote Lal giving gadasa blows to them. When the witnesses challenged, they threatened them too. After causing gadasa blows to the two ladies, the three brought dried leaves and put the same on the bodies of Sampatti and Shobhawati setting them afire so as to burn the dead bodies. They also set fire to the thatched house of Sampatti. The witnesses named above had reached the spot raising alarm which attracted other witnesses also. The accused fled away towards southern side. The witnesses tried to control the fire and removed the dead bodies of Sampatti and Shobhawati from the cot and separated them. The dead bodies were half burnt, Shobha PW 2 then went to the village Chaukidar Sita Nai PW 1 and narrated the incident to him who, in his turn, went to the Police Station and lodged the F.I.R. by oral narration. The case was registered and investigation taken up by S.I. J.K. Singh PW 8 who proceeded to the spot. It was still dark when he reached the village of incident. He held inquest on the dead bodies of the two deceased after sunrise. Necessary papers were prepared and the dead bodies were sent for post mortem after being sealed. Investigation was later on taken up by S.I. Yash Pal Singh after the transfer of J.K. Singh, Anand Shanker Dubey PW 9 took over as S.O. of Police Station concerned and he proceeded with the investigation in the case with effect from 16.5.1978. The charge-sheet was ultimately submitted by him.

4. The post mortem over the dead body of Sampatti was conducted on 21.4.1978 at 2.00 P.M. by Dr. M.Z. Hasan PW 5. She was aged about 40 years and about 11/2 day had passed since she died. The Doctor found her face to be completely black and charred, eye-lids and scalp were burnt and abdomen was slightly distended. He found the following ante-mortem injuries on the person of the deceased Sampatti:-

1. Incised wound 8 cm x 2 cm x bone deep, right side face placed along the body of mandible, 1 cm below lower lip and 3.5 cm below right ear. Margins were sharp and well defined. There was sprouting of blood all round. The cut surface of muscle was blackened and hard.

2. Incised wound 4 cm x 1.5 cm x bone deep, placed 1 cm below injury No. 1 over right side along the body of mandible. Cut surface was black. Marks of sprouting of blood present.

3. Incised wound 12 cm x 2 cm x bone cut extending over front and middle of neck towards right side, placed 3.5 cm below chin and 8 cm below right ear. Mark of sprouting of blood present. Margins were sharp and well defined, cutting skin, muscles, blood, vessels and trachea along with oesophagus and 4th clavical vertebra in mid-line. The cut surface was blackened.

4. Incised wound 3 cm x 1 cm x muscle deep over back of left forearm, 6 cm above wrist. Margins were sharp, sprouting blood mark present.

5. Incised wound 3.5 cm x 1 cm x bone deep, back of left forearm, 1 cm below injury No. 4. Margins were sharp, blood present and surface was black.

5. On internal examination, he found bone cut on the fourth clavicle under injury No. 3 as also trachea. In the opinion of the Doctor the death had occurred due to shock and haemorrhage due to ante-mortem injuries.

6. The post mortem over the dead body of Shobhawati was also conducted on the same day at 3.00 P.M. by Dr. M.Z. Hasan PW 5. She was aged about 10 years and about 11/2 day had passed since she died. Eyes were closed. Chest, abdomen and back were covered with particles of hay and grass at places. They were burnt and black. He found the following ante-mortem injuries on the person of the deceased Shobhawati:-

1. Incised wound 12 cm x 2 cm x bone cut over left side face, 2 cm below right ear, placed along clean cut edges, sprouting of blood was present.

2. Incised wound 5 cm x 1 cm x bone deep over left side face, just below injury No. 1. Margins were sharp, placed along the body of mandible.

3. Incised wound 2 cm x 1 cm x muscle deep over left side of neck 1 cm below injury No. 2, placed horizontally, cutting underlying large vessel sharply, sprouting of blood all around the injury.

4. Incised wound 4 cm x 1 cm x muscle cut, placed horizontally over left side of neck, 7 cm below left ear, cutting the internal carotid artery and muscles sharply. There was sprouting of blood all around the wound.
5. Ante-mortem I and II degree burns 40 cm x all around the right upper arm and 40 cm x all around the left upper arm.
6. Ante-mortem I & II degree burns-35 cm x 25 cm involving back of chest and waist right side.
7. Ante-mortem I & II degree burns-15 cm x 10 cm over right side abdomen.
8. Ante-mortem I, II & III degree burns-60 cm x all around over back of hips, thighs and right & left lower extremities.
7. The death had occurred due to shock and haemorrhage as a result of ante-mortem injuries.
8. The defence was of denial. The accused, however, admitted that they were the collaterals of the deceased.
9. The prosecution in all examined 9 witnesses including Doctor and those related with the investigation of the case. The important witnesses were the informant Sita Nai PW 1 and three eye-witnesses Shobha PW 2, Sri Niwas PW 3 and Ram Surat PW 4. As a matter of fact, the lodging of the F.I.R. by Sita Nai PW 1 was based on the information passed on to him by Shobha PW 2. In true sense, therefore, the fate of the appeal depends upon the appraisal of the evidence of Shobha PW 2 and other two eyewitnesses Sri Niwas PW 3 and Ram Surat PW 4.
10. We have heard Sri P.N. Misra, learned Senior advocate for the appellants and Smt. Praveen Shukla, learned A.G. A.
11. The submission of Sri Misra is that the accused had no motive to commit this crime and that they came to be roped in falsely at the instance of Shobha PW 2 who suffered extreme disappointment, losing the chance of getting his son married with Shobhawati which would have got him the land of the deceased Sampatti. On the other hand, the learned A.G.A. has supported the finding of guilt recorded by the trial court terming the evidence to be trustworthy. We wish to examine the worth of arguments made at the bar having regard to the evidence on record and the attending circumstances.
12. We take up the question of motive first. It is an established principle of law that motive is insignificant in a case of direct evidence like the present one. Further, the prosecution can only bring on record the previous background as existing and known to it which has been established by evidence in this case too. It is not possible to accept the contention that the accused-appellants-father and his two sons had no motive to commit this crime. Rather, they had strong motive to do away with the two deceased unfortunate ladies (mother and daughter). It has clearly been

stated by the eye-witness Shobha PW 2 that the deceased accused-appellant Jagannath was cultivating the land of the deceased Sampatti after the death of her husband. She had settled the marriage of her deceased daughter Shobhawati with the son of this witness Shobha resident of the same village and Tilak ceremony was to be performed on the following day. It has also come in the evidence that Jagannath and his two sons had asked Sampatti not to marry her daughter-Shobhawati with the son of Shobha PW 2, but she did not yield to their pressure. Being in actual possession of the land of Sampatti, the accused-appellants were only giving a share of the agricultural produce to her. It was quite natural that they apprehended that with the marriage of the daughter of Sampatti with the son of Shobha PW 2, her land would go out of their hands and grip and they would cease to be the beneficiaries of the same by cultivating it, retaining large part of produce and only giving a paltry share to her. Under the circumstances, it sounds to be quite probable that they got annoyed and decided to do away with the two ladies to secure the retention of land with them. The submission of learned counsel for the accused-appellants is that accused-appellants would have not got the property of Sampatti even after her death and that of Shobhawati as there were other collateral who were alive to succeed to the estate of the deceased. We do not think that this contention displaces the strong motive on the part of the accused-appellants to commit this crime. As is well known, possession is nine points" ownership out of ten. The accused-appellants were in actual possession of the land of the deceased and were direct beneficiaries by cultivating the same by giving a small portion of the yield to the deceased. Had the daughter of Sampatti been married to the son of Shobha PW 2 resident of the same village, there was every likelihood of the land also slipping out of their hands, depriving them of the benefits that they were deriving. It was a strong motive on their part to liquidate the two unfortunate ladies. We, therefore, reject the contention that the accused-appellants did not have any motive to commit this crime. Moreover, as we pointed out, the motive aspect is not of great significance in this case because of the availability of direct testimony of eye-witnesses regarding the commission of this crime by the accused-appellants.

13. The other argument from the side of the accused-appellants is that Shobha PW 2 was an interested witness. Further, the learned counsel argued, he and the other two eye-witnesses Srinivas PW 3 and Ram Surat PW 4 could not have reached the spot to witness the incident on hearing the so-called shrieks of the victim ladies. It has simultaneously been urged that no person residing in the immediate neighbourhood of the place of incident has been examined. No doubt, Shobha PW 2 may be termed as an interested witness since the deceased Shobhawati daughter of the deceased Sampatti had been betrothed to his son and the Tilak ceremony was to be performed on the following day, but that alone does not justify the rejection of his testimony. It has to be kept in mind that all the three eye-witnesses are the residents of the same village and the F.I.R. was lodged by Sita Nai PW 1 by oral narration on the basis of the information supplied to him by Shobha PW 2. The

incident had taken place at about 11.30 P.M. and the F.I.R. was lodged the same night at 2.20 A.M., the distance of the place of occurrence from the Police Station being 4 miles. Sita Nai PW 1 informant was the village Chaukidar. Shobha PW 2 had reached him and narrated the incident to him. Sita Nai himself came to the place of the incident and saw the dead bodies of the two ladies with his own eyes whereafter he went to the Police Station to lodge the F.I.R. The names of the eye-witnesses find place in this promptly lodged F.I.R. by oral narration. It has come in the testimony of Sita Nai PW 1 that 15 houses intervened between that of the deceased and the eye-witness Shobha. The house of Shobha was in the northern side of the village whereas that of the deceased in the southern side. Shobha himself described the distance between his house and that of the deceased ladies as about two bighas. There was nothing unnatural that in the dead silence of night, Shobha PW 2 and other two eye-witnesses heard the shrieks of the deceased escaping from their lips at the start of the incident. It has consistently been the testimony before the court that it was a moonlit night. Shobha PW 2 is categorical in his testimony that on hearing shrieks from the house of the Sampatti he came running to her house and saw that the accused-Jagannath and Molahu were pressing Sampatti and Shobhawati on a cot lying in front of their house and accused-Chhotey was inflicting gadasa blow on them repeatedly. He challenged them and he, too, was threatened. His statement has gone further that after causing gadasa blows to two unfortunate ladies, the accused brought dried leaves and put the same on their bodies. The accused Molahu set fire to it. He is clear in his deposition that he saw and identified the accused in the moonlit night and in the light of burning of thatch. He further stated that the fire was extinguished and the dead bodies were separated. They were found to be partly burnt. There is nothing unnatural that covering short distance existing between his house and that of deceased, he (Shobha) reached the spot running and witnessed the incident.

14. The statement of Shobha PW 2 has been supported by Srinivas PW 3 and Ram Surat PW 4. Srinivas deposed that in the fateful night, he was sleeping at his door and on hearing the shrieks of Sampatti ran to her door where he witnessed the incident. Ram Surat PW 4 was also sleeping at his door, his house situating at a distance of five or six houses from the house of Sampatti. He, too, had rushed to her house and witnessed the incident.

15. It consistently follows from the testimony of the three eye-witnesses that it was Chhote Lal who gave gadasa blows to the two ladies lying on one and the same cot and the other two pinned them down. The witnesses have consistently stated this too that the thatched house of the deceased was also burnt and that the bodies were partly burnt (as found in the post mortem reports too). Nothing could be shown to castigate the testimony of these two independent witnesses resident of the same village who could definitely reach the spot on hearing shrieks in the night when complete silence prevailed. The accused-appellants could not show any enmity with them or about their thickness with the deceased or Shobha PW 2.

16. The learned counsel for the accused-appellants then urged that no immediate neighbour of the deceased came to support the prosecution case. We do not think that it makes any difference. It is not capable of causing any dent in the prosecution version which is correctly reflected through the statements of three eye-witnesses examined at the trial. Needless to say, some persons are courageous to respond to the call given by some one in distress while others turn a deaf ear and assume passive posture. It is so observed every day. In the case at hand, Shobha was "would be" relative of the deceased and that would have further inspired him to rush up on hearing shrieks of the two ladies in distress.

17. The learned counsel for the accused-appellants then urged that there were contradictions in the ocular version and medical evidence. He pointed out that as per the statement of Dr. M.Z. Husain PW 5 who conducted autopsy on the dead bodies of the two ladies, there were ante-mortem burn injuries on the person of Shobhawati which runs counter to the ocular version of the witnesses that two ladies were first murdered by infliction of gadasa blows and then burnt with the spread of dried leaves. We do not think that there is any contradiction between the ocular and medical evidence. Rather the two are in complete harmony. Both the deceased ladies did sustain incised wounds as reproduced earlier and their bodies were burnt also. The eye-witnesses have stated that accused Chhotey Lal dealt with gadasa blows on the two ladies. The statements of the eyewitnesses and the medical evidence have to be construed reasonably and logically instead of in a pedantic manner to find artificial inconsistency between them. In the assessment of the witnesses who saw the occurrence from a distance of few paces both the ladies appeared to be dead after sustaining the gadasa blows. There is no inconsistency when they say that soon after the accused put dried leaves on their bodies and burnt them. The light in the body of Shobhawati had not completely extinguished. This being so, her burn injuries could be ante-mortem. It is not material as to on what particular moment Shobhawati was completely dead. The point of the matter is that the repeated gadasa blows were inflicted on the two unfortunate ladies whereafter the accused-appellants placed dried leaves on them and burnt them. The evidence of cut injuries inflicted by gadasa and that of the bodies being burnt is very much there in the post mortem reports proved by the Doctor and the same is perfectly in harmony with the ocular version.

18. So, considering all the arguments of the learned counsel for the accused-appellants with thorough scrutiny of the evidence on record, we do not find any merit in any of them. The father and his two sons committed this double murder of two unfortunate ladies in a diabolical manner. Committing this crime, they also caused to disappear the evidence by setting fire to the dead bodies of the two victim ladies. They have rightly been convicted by the trial court u/s 302 I.P.C. read with Section 34 I.P.C. and 201 I.P.C. with sentence of life imprisonment for the former and two years rigorous imprisonment for the latter. It is a different question that one of them, namely, Jagannath (father of the two accused-appellants) died

during the pendency of the appeal and rendered himself to be immuned from the action of worldly court of law.

19. In the net conclusion, for the discussion made hereinabove, we dismiss this appeal.

20. We direct the Chief Judicial Magistrate. Basti to cause the accused-appellants-Molahu and Chhote Lal to be arrested and lodged in jail to serve out the sentences passed against them.

21. The compliance be reported to this Court within two months. Certify the judgment to the lower court.