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**(1991) 03 AHC CK 0144**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 2161 of 1982

Mustafa Khan

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** March 5, 1991

**Acts Referred:**

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

**Citation:** (1991) 15 ACR 277

**Hon'ble Judges:** Palok Basu, J; P.P. Gupta, J

**Bench:** Division Bench

**Advocate:** S.N. Pandey, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

P.P. Gupta, J.

The above appeal is preferred by the accused Mustafa Khan against the judgment dated 3-4-82 convicting the Appellant u/s 302 IPC and order dated 5-4-82 sentencing him to undergo life imprisonment passed by the Sessions Judge Bulandshahr, in Sessions Trial No. 439 of 1981.

2. The Appellant was charged u/s 302 IPC for having committed the murder of one Taj Mohammad on 18-3-81, at about 1 P.M., in a room on the upper storey of the Mosque Nanhu Khan situate in Gulaothi Town, District Bulandshahr.

3. The appeal had been forwarded by the Appellant from Jail. Shri Sanjeev Ratan who was appointed Amicus Curiae has argued the case with ability on behalf of the Appellant. Sri A.K. Dwivedi, Addl. Government Advocate, has been heard for the state and after perusing the entire record on 5-3-1991, the appeal was dismissed. We now proceed to give the reasons therefor.

4. The material facts relevant for the purpose of this appeal, in brief, are given below.

5. Deceased Taj Mohammad had earlier worked as Imam at the Mosque of Nanhu Khan situate in Gulaothi Town, district Bulandshahr. About 3 years prior to his murder, he left Gulaothi and had sought employment in a Madarsa at Agra. The accused Mustafa Khan was working as Imam at the said Mosque at the time of occurrence and was occupying a room in the first floor of the said Mosque.

6. Three days prior to the occurrence, the deceased Taj Mohammad had come to Gulaothi for raising subscription for charity purposes and was staying along with the deceased in his room on the first floor of the Mosque.

7. At about 1 P.M. on 18-3-81, cries of Taj Mohammad coming from the said room attracted the attention of the prosecution witnesses and others, who immediately went up stairs and noticed the accused inflicting injuries with a dagger on the neck of Taj Mohammad, who was lying on the floor with his face downwards. His legs were tied with a rope. The Appellant was caught red handed with the dagger by the witnesses Hashmat Ali, PW 2 and Abdul Rauf, PW 3. The witness Haji Imamuddin, PW 1, got a report written and immediately rushed to the police station where the same was lodged at 1.30 P.M. The S.O. Ram Pal Singh, PW 6 accompanied by police personnel immediately reached the spot. The Appellant, who was held by the witnesses was arrested by him. The dagger was taken in to possession from the accused and was sealed vide a Memo. The witnesses present there were interrogated. Other necessary legal formalities were done by the S.I. Rajendra Singh Chowdhary who was deputed by the S.O. The dead body of Taj Mohammad was sealed and sent for post-mortem examination. The Appellant, in custody, was also sent to the police station. The blood stained pieces of rope were taken into possession by S.I. Rajendra Singh Chaudhary and their memos were prepared. Samples of blood stained and plain earth were also taken and sealed in different containers as per rules. After completing the investigation S.O. forwarded charge sheet, Ex. Ka-16, against the Appellant.

8. The autopsy on the body of the deceased was performed by Dr. R.K. Mittal, PW 4, on the following day i.e. on 19-3-81 at 3 P.M.

9. The Appellant denied the charge and pleaded not guilty. He did not produce any evidence.

10. In support of the charge the prosecution examined PW 1, Haji Imamuddin, the informant, PW 2 Hashmat Ali and PW 3 Abdul Rauf as eyewitnesses of the commission of crime, besides, Dr. R.K. Mittal, who had performed the autopsy of the deceased and PW 6 S.I. Ram Pal Singh, I.O. the other formal witnesses. On the totality if the eye-witness account and other material available on record, the learned Sessions Judge held the Appellant guilty of the offence u/s 302 IPC and accordingly convicted and sentenced him as above.

11. It is a case of spot arrest. It has been deposed by the eye-witnesses examined by the prosecution that they saw the accused assaulting the deceased Taj Mohammad with a dagger. Not only that they reached there when the assault was being made, they also over-powered the Appellant. He was handed over by them to the S.O. who arrived there soon after receiving the information. If the eye-witness account regarding the assault and arrest of the question is worthy of credence and can be believed, the question of motive becomes more or less academic. In cases of arrest on the spot the question of motive loses much of its relevance. So if the testimony of the eye-witnesses, is worthy of credence and is believed by the court, the question whether there is any motive or not becomes wholly irrelevant.

12. According to the prosecution, the occurrence took place at 1 P.M. on 18-3-81, in a room on the first floor of Mosque of Nanhu Khan. The post-mortem examination on the body of deceased Taj Mohammad was performed the next day on 19-3-81 at 3 P.M. by Dr. R.K. Mittal. In his examination, he has stated that the death of Taj Mohammad was possible on 18-3-81 at about 1 P.M. There is no suggestion to the contrary given to him. Thus, the time of the murder of deceased Taj Mohammad as alleged by the prosecution is fixed by the expert testimony of the Doctor.

13. The S.I. Ram Pal PW 6 has stated that he found the dead body of deceased Taj Mohammad in the room on the first floor of the Mosque of Nanhu Khan situated in Gulaothi from where he had collected and sealed the blood stained earth. The place of occurrence has also been shown by him in the site plan (Ex. ka-15) prepared by him. Thus, the place of occurrence as alleged by the prosecution is also fixed by the testimony of this witness who had collected the blood stained earth from the place of murder.

14. Thus after having fixed the place and time of occurrence as alleged by the prosecution, it is to be seen whether the eye-witnesses examined by the prosecution can be believed.

15. PW 1 Haji Imamuddin, aged 75 years, owns a house in the same Mohalla where the Mosque of Nanhu Khan is situated. When he was passing through the Mosque he got attracted from the shrieks of the deceased coming from the first floor of the Mosque. There were other witnesses also who were similarly attracted. He along with other witnesses reached the room after scaling the wall of the Mosque and found the Appellant striking the deceased Taj Mohammad with a dagger on his neck. At that time, Taj Mohammad was lying on the floor with his legs tied with a rope. PW 2 Hashmat Aii who owns a shop on the ground floor of the said Mosque, is the other witness who rushed to the first floor of the Mosque after hearing the shrieks of Taj Mohammad. There is no suggestion given to him that he does not own any such shop. PW 3 Abdul Rauf is another-eye-witness who was similarly attracted. He was getting a shave in the shop of Alim Khan, barber, situate in the ground floor of the said Mosque. All these three witnesses have deposed to have rushed to the room on the first floor of the Mosque after scaling the wall and having

seen the Appellant giving dagger blows on the neck of the deceased Taj Mohammad. They are most natural witnesses whose presence at the time of occurrence cannot be disbelieved.

16. PW 1 Haji Imamuddin states that he got the report scribed from Dr. S. Sahabuddin who had also reached the scene of occurrence. He rushed immediately to the police station for lodging the same. It appears from the record that the report was lodged at 1.30 P.M. i.e. within half an hour of the occurrence. PW 2 Hashmat and PW 3 Abdul Rauf claimed to have over-powered the Appellant with blood stained dagger in his hand. They handed over the Appellant to the S.O. who arrived there immediately after lodging of the FIR. This finds corroboration from the statement of the Investigating Officer.

17. The ocular account as given by the prosecution witnesses which is to the effect that they saw the Appellant inflicting injuries on the neck of Taj Mohammad with a dagger finds ample corroboration from the post-mortem report, Ex. ka-7, showing three incised wounds on the neck of deceased besides other incised wounds on other part of his body. In the circumstances, the direct evidence of the prosecution witnesses, namely, PW 1 Haji Imamuddin, PW 2 Hashmat Ali and PW 3 Abdul Rauf regarding the assault on Taj Mohammad by the Appellant is worthy of credence and cannot be disbelieved.

18. In this connection, it is important to note that the Appellant in his statement recorded u/s 313 Code of Criminal Procedure, admitted that the deceased Taj Mohammad had been staying in the Mosque of Nanhu Khan since 2 or 3 days prior to the occurrence. He has also admitted that he the accused, was working as a teacher in the Madarsa run in the said Mosque. Receipt books were found in the belongings of the deceased. It is thus established from the prosecution evidence that Taj Mohammad who had earlier worked in the said Mosque as Imam had come from Agra for raising subscription for charitable purposes and was staying with the deceased in his room on the date of occurrence.

19. It is now to be seen whether the witnesses examined by the prosecution, had a motive to falsely implicate the Appellant for the murder of Taj Mohammad. The Appellant in his statement u/s 313 Code of Criminal Procedure has stated that when he used to take classes in the Mosque, some boys used to disturb him. Sometimes some boys were beaten by him while others were admonished. He has also stated that because he refused to sweep the floors of the Mosque, the Namazian (worshipers) got annoyed with him. Lastly, he has stated that on account of this enmity they wanted to appoint Taj Mohammad as Imam in his place. It is important to note that no such suggestions have, however, been given to any of the three prosecution witnesses examined by the prosecution nor any evidence to this effect has been led. There is nothing on record to show either of the three prosecution witnesses ever had any altercation with the Appellant on this count. It cannot, therefore, be presumed that there was any animosity between the prosecution

witnesses and the Appellant. Further, the statement of the Appellant that Namazian wanted to appoint Taj Mohammad as Imam in his place, if true, can be a sufficient motive for the Appellant to do away with Taj Mohammad. In these circumstances, it is established beyond doubt that there was no reason with the prosecution witnesses to falsely implicate the Appellant for the murder of Taj Mohammad.

20. In the result, we hold that the prosecution has successfully proved the case beyond any shadow of doubt against the Appellant. The appeal has, therefore, no merits and must be dismissed.