(2003) 01 AHC CK 0173

Allahabad High Court

Case No: Criminal Appeal No. 2324 of 1981

Pran Singh		APPELLANT
	Vs	
State of U.P.		RESPONDENT

Date of Decision: Jan. 20, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 58
- Penal Code, 1860 (IPC) - Section 300, 302
- Uttar Pradesh Children Act, 1951 - Section 27

Citation: (2003) CriLJ 2721

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

Bench: Division Bench

Advocate: V.B. Singh and V.S. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision: Partly Allowed

Judgement

M.C. Jain, J.

The appellant is one Pran Singh who has been convicted u/s 302, I.P.C. and sentenced to life imprisonment by Sri R.R. Jatava, the then IV Addl. Sessions Judge, Hamirpur by judgment dated 22-9-1981 passed in Sessions Trial No. 1 of 1980. One Smt. Omwati alias Gundela Wall wife of Ayodhya Prasad was also tried with him u/s 302, I.P.C. read with Section 34, I.P.C. and Section 120B, I.P.C., but she was acquitted.

2. Draped in brevity, the facts leading to this appeal are that the deceased Bihari was the material uncle of the appellant Pran Singh (hereinafter referred to as accused). The incident took place on 28-8-1979 at about 1 p.m. in village Teli Pahari, P.S. Mahob Kanth. District Hamirpur. The report was lodged by Chhavirani PW 1 (wife of the deceased) at the concerned police station on the same day at 4.10 pm. The distance of the police station from the place of occurrence was 3 kms. The deceased had transferred 4 Bighhas

of land to the accused out of love and affection but he was not satisfied with this gift. He wanted half of the land of his maternal uncle Bihari. Another piece of previous background was that a dacoity had earlier been committed at the house of Aydohya Prasad whose wife co-accused Omwati alias Gundela Wall was. She suspected the deceased Bihari as being involved in the commission of dacoity at her house. The accused Pran Singh was thick and friendly with her. Earlier to the accident, Omwati alias Gundela Wall had offered a threat to the complainant Chhavirani PW 1, one or two days before incident that she would get her husband murdered in broad day light.

3. A day before the incident, Hari Singh''s son had sold an old and used utensil made of iron of the complainant. On the fateful day at about 1 p.m. she with her husband was sitting on a slab of stone lying outside her cattle house and the house of Dal Chandra, Pradhan PW 2. Some other villagers, namely, Dal Chandra, Pradhan PW 2, Mata Din PW 3 and Hari Singh were also there. The accused Pran Singh was also sitting and talking there. After talking for sometime, all of them slep there. The deceased and the witnesses went into the nap. The accused brought an axe and struck blows on the neck of Bihari. All woke up hearing the sound of axe blows and they saw the accused causing injuries to Behari deceased with axe on his neck. The witnesses challenged him and tried to catch-hold of him but he threatened and fled away. The deceased died at the spot. The complainant Chhavirani PW 1 then went to the police station with Dal Chandra PW 2 and lodged the report of the incident by oral narration. A case was registered and investigation followed which was conducted by S.I. Malkhan Singh PW 5. It resulted in the accused with co-accused Omwati alias Gundela Wall being booked for trial ultimately culminating in the passing of the impugned judgment whereby the accused Pran Singh was convicted but the co-accused Omwati alias Gundela Wall was acquitted.

4. The post-mortem over the dead body of the deceased was conducted on 29-8-1979 at 3.30 pm. by Dr. A.K. Srivastava PW 6. He was aged about 40 years and about one day had passed since he died. The following ante-mortem injuries were found on his person :

1. Incised wound 9 cm x 3 cm x bone deep on right side of neck extending from 3 cm above clavicle to the root of neck in back aspect up to 7th cervicle vertebrae and fracture of 7th cervicle vertebrae. Clots present.

2. Incised wound 7 cm x 3 cm x bone deep on left side of neck 8 cm below lobule of left ear. Fracture of 5th cervicle vertebrae. Clots present.

3. Incised wound 6 cm x 1 cm x bone deep on left side of neck 5 cm below injury No. 2 Fracture of 6th cervicle vertebrae. Clots present,

4. Incised wound 7.5 cm. x 1.5 cm x bone deep on left side of neck and 0.2 cm below injury No. 3.

5. The case of death was haemorrhage, owing to the ante-mortem injuries which could be caused by an axe. The injuries were sufficient to cause death in ordinary course of

nature.

6. At the trial, the prosecution relied on the testimony of the complainant Chhavirani PW 1, Dal Chandra PW 2 and Matadin PW 3 as the eye-witnesses beside on the formal evidence relating to the registering of the case, its investigation and medical evidence concerning the post-mortem of the deceased.

7. In his statement u/s 313, Cr.P.C. the accused denied the prosecution case, though he admitted that the deceased was his maternal uncle and he had transferred 4 Bighas of land to him. He, however, denied that he wanted more land from the deceased and that he was annoyed because he had refused to oblige him in that behalf. He also denied any connection with the co-accused Omwati alias Gundela Wall and that murder was committed by him in conspiracy with her. According to him, he had been falsely implicated by the complainant Smt. Chhavirani PW 1 as her husband had transferred 4 Bighas of land to him against her wishes. He, however, did not lead any evidence in his defence.

8. We have heard learned counsel for the appellant in support of the appeal and the learned A.G.A. in opposition from the side of the State. We intend to deal with the arguments advanced at the bar having regard to the material and evidence on record.

9. It has first been argued by the learned counsel for the appellant that there was no motive on the part of the accused to commit the murder of his maternal uncle Bihari. He was rather affectionate and obliged to the deceased as he had transferred 4 Bighas of land to him. It has also been urged that the prosecution could not prove any conspiracy between him and co-accused Omwati alias Gundela Wall and it is completely belied that he committed this murder at her behest to exterminate the deceased who was suspected to be Involved In committing dacoity at her house earlier. Suffice it to say in this regard that the motive is the hidden inner spring of human action which cannot always be known to the prosecution. The prosecution can only be expected to place before the Court the previous background as known to it which has been done in the present case, Moreover, the question of motive is wholly immaterial in the case of direct ocular account which is the situation here. We are, therefore, not prepared to attach any importance of the argument on motive aspect harped from the side of the accused. 10. The second argument of the learned counsel for the appellant is about the veracity of the eye-witnesses. It is also urged that two of them are quite interested, namely, complainant Smt. Chhavirani PW 1 and Dal Chandra PW 2. She is the wife of deceased and it has come to be admitted by her that Dal Chandra PW 2 is also of the same Khandan. As regards Matadin PW 3, submission is that he did not have his house near the place of incident and as such his presence at the time of Incident is improbable. We have examined the evidence carefully and we do not find any substance in the argument raised by learned counsel for the appellant. It is to be pointed out that Matadin PW 3 is also resident of the same locality and he has given a plausible explanation for his presence at the spot that it was his usual practice to relax with Dal Chandra at the place of occurrence

after lunch daily. The house of Dal Chandra PW 2 is depicted in the site plan being in close proximity of the place where the incident took place. The cattle house of the complainant and the deceased was adjacent thereto. Therefore, there is nothing unnatural and unusual that the three witnesses, namely, Smt. Chhavirani PW 1 (wife of the deceased), her neighbour Dal Chandra PW 2 and Matadin PW 3 were there at the time of incident. It is further to be noted that any of these witnesses had no enmity against the accused. Therefore, there could be no reason for false implication of the accused who was also related to Smt. Chhavirani PW 1 and Dal Chandra PW 2 through Bihari deceased. There could be no reason for Smt Chhavirani PW 1 to falsely impicable Pran Singh for the murder of her husband and for the other two witnesses backing and supporting her without any grudge against him. Despite searching cross-examination of the three eye-witnesses, central core of their testimony could not be displaced that it was he who had inflicted axe blows on him on the given day time and place. In our opinion, their testimonial assertions cannot be faulted.

11. It has next been argued by learned counsel for the appellant that the Investigating Officer did not find any blood at the spot which renders the place of occurrence to be doubtful. We are sure that this argument proceeds on a superficial approach. The Investigating Officer Malkhana Singh PW 5 has clearly stated that he had found blood at the place of incident near slab of stone and it is found to be so mentioned in the Panchayatnama also prepared by him. The blood stained and simple pieces of stone had been taken in possession by him. Therefore, this argument is also rejected.

12. Yet another argument of learned counsel for the appellant is based on the condition of stomach of the deceased as found at the time of the post-mortem of his dead body. It is pointed out that his stomach was found empty, but his small and large intestines were loaded. The statement of Dr. A.K. Srivastava PW 6 has been referred to that the deceased must have not taken any food during 5 or 6 hours preceding his death. Our attention has also been Invited to the statement of Smt. Chhavirani PW 1 (wife of the deceased) that he had taken his lunch before his murder. The argument has been built up that had he taken the food in the day before his murder at about 1 pm. his stomatch could not be found empty and it was an indicator that actually the Incident took place at about the time of sunrise. We are not inclined to accept this reasoning. It is pertinent to state that the stomach condition cannot be a sure determinant of the time of death. Learned trial Judge has well dealt with this aspect of the matter and we agree with him that as stated by the Doctor, there could be difference of 6 hours in the approximate time of death on either side. At the time of post-mortem, conducted on 29-8-1979 at 3.30 p.m. approximate time of death was found to be one day. Giving margin of 6 hours on either side, he could have died at the earliest at about 9 a.m. on 28-8-1979 or latest by about 9.30 a.m. on that day. By that time he must have ordinarily eased himself. It was really an indicator that something was wrong with his stomach and that he had not eased by the time of his murder at about 1 p.m. So far as the statement of his wife in this behalf is concerned, it appears that she was somewhat, confused and seemingly made the

statement under stress of cross-examination that he had taken lunch before his death. There is no evidence as to at what time the deceased had eaten something before his death. May be that he had taken a bit of food early, type of which is not known and it passed down from the stomach by the time of murder.

13. We have dealt with the above all the arguments raised from the side of appellant in support of this appeal and we do not locate any merit therein. It is proved to the hilt by satisfactory and clinchingly evidence that the accused committed murder of his maternal uncle in broad daylight on the given time, day and place by axing him to death and his conviction u/s 302. I.P.C. is perfectly justified.

14. Learned counsel for the appellant has then argued that the appellant Pran Singh was less than 16 years of age at the time of the incident and even on being found guilty of the murder in question, he cannot be sentenced to imprisonment. Our attention is invited to his statement u/s 313, Cr.P.C. recorded on 11-9-1981 wherein he gave his age as 17 years. It is reasoned that the incident took place on 28-8-79 and he would have been about 15 years of age at the time of the incident. Learned A.G.A. has countered this argument by pointing out that there is an observation of the learned trial Judge on the statement of the accused recorded u/s 313, Cr.P.C. that he appeared to be 20 years old. His. submission is that he was, therefore, more than 18 years at the time of incident and that the accused did not lead any evidence in his defence to prove himself of less than 16 years of age at the time of incident, though opportunity was available to him to do so that after the recording of the statement u/s 313, Cr.P.C. Reply of the learned counsel for the appellant is that it was not necessary for the accused to have let any evidence regarding his age because Smt. Chhavrani PW 1 (wife of the deceased) herself admitted in her cross-examination of 6-3-1981 that the age of the accused was 15 or 16 years.

15. We have carefully considered this aspect of the matter concerning the age of the accused at the time of incident. We should point out that in the charge-sheet also submitted against the accused on 14-10-1979 by the Investigating Officer, his age is mentioned as 16 years. True, the learned trial Judge has remarked on the statement of the accused u/s 313, Cr.P.C. that he appeared to be about 20 years of age but his observation is not based on any medical data. It goes without saying that the body language does not always correctly described the age of a person. Appearance sometimes is deceptive. Some persons do not show their years by appearance and look younger than what they are. Others give appearance of older than what they actually are. Some are of stout body and physique whereas others are of week frame or otherwise give a childish look. How a person would look by appearance depends upon a number of factors such as feeding, breeding, race, climatic condition etc. Therefore, the observation made by the learned trial Judge unsupported by any medical data or on any other firm basis cannot be taken to be the last word as to the age of the accused. Regard has to be had to this aspect of the matter also that the age of the accused in the present case is a relevant fact. In Section 17 of the Indian Evidence Act "admission is defined as a statement, oral or documentary, which suggests any inference as to any fact in issue or

relevant fact. There is substantial force in the argument of learned counsel for the appellant that the complainant herself having admitted the accused to be aged about 15 or 16 years in her cross-examination on 6-3-1981, it was not necessary for him to have led any other evidence in this behalf.

16. We should take note of Section 58 of the Indian Evidence Act which provides that the facts admitted need not be proved.

17. The provisions of U.P. Children Act, 1951 deserve attention. Section 2(4) of the U.P. Children Act, 1951 defines a child to mean a person under the age of 16 years. Section 27 of the aforesaid Act says that notwithstanding anything to the contrary in any law, no Court shall sentence a child to imprisonment for life or to any term of imprisonment. Section 29 provides, insofar as it is material, that if a child is found to have committed an offence punishable with imprisonment, the Court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years.

18. The Supreme Court has held in the case of Bhola Bhagat Vs. State of Bihar, that the benefit of Children Act should not be refused on technical grounds.

19. In the instant case also on a holistic approach of the material and evidence on record, we accept that the accused was less than 16 years of age at the time of Incident which was committed on 28-8-1979. More than 23 years have rolled by and presently he must be over 35 years of age. Therefore, there can be no question of sending him to an approved school now.

20. In view of the foregoing discussion, the conviction of the accused u/s 302, I.P.C. should be maintained. But his sentence of life imprisonment is to be quashed.

21. Resultantly, we partly allow this appeal. The conviction of accused-appellant Pran Singh u/s 302, I.P.C. is maintained. However, as he was a child as per the U.P. Children Act, 1951, at the time of incident, the sentence of life imprisonment passed against him is quashed.

22. Let a copy of this judgment along with record of the case be sent to the below for needful action and necessary entries in the relevant register under intimation of this Court within one month.