
(2003) 08 AHC CK 0169

Allahabad High Court

Case No: Criminal Appeal No. 619 of 1981

Fauran Singh (in Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 27, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 82, 83
- Evidence Act, 1872 - Section 118, 3, 9
- Penal Code, 1860 (IPC) - Section 302

Citation: (2003) 3 ACR 2919

Hon'ble Judges: V.N. Singh, J; U.S. Tripathi, J

Bench: Division Bench

Advocate: A.K. Awasthi, Amicus Curiae, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

1. This appeal has been directed against the judgment and order dated 10.2.1981 passed by v. Ith Additional Sessions Judge, Agra in Sessions Trial No. 649 of 1979 convicting the Appellant Fauran Singh u/s 302, I.P.C. and sentencing him to undergo imprisonment for life.

2. The prosecution story, briefly stated, was that Ram Das deceased (37) was resident of village Dida Mai, Police Station, Firozabad North, district Agra. The Appellant Fauran Singh was also resident of said village. The deceased and the Appellant were descendants of a common ancestor. On 16.5.1979 at about 12-12.30 p.m. Ram Das deceased was sleeping in the outer chhappar of his house. His brother Lala Ram (P.W. 2) daughter Km. Mithilesh (P.W. 1) and wife Smt. Bhoodevi were in the "Aangan" of the house. At about 12.30 p.m. the Appellant came to the said chhappar of the deceased and started inflicting "gandasa" blows on his neck. The deceased cried and hearing his shrieks, Lala Ram (P.W. 2), Km. Mithilesh (P.W. 1) and Smt. Bhoodevi rushed towards the chhappar. When they came out of their

house, they saw that the Appellant was inflicting "gandasa" blows on the neck of the deceased. Observing the witnesses, the Appellant threw the "gandasa" into a drum kept in the said chhappar and ran away. Lala Ram (P.W. 2) chased the Appellant upto some distance, but he could not be apprehended. He returned back to his chhappar. By that time, several persons of the village had assembled and he told them that the Appellant had inflicted "gandasa" blows on the deceased.

3. Lala Ram (P.W. 2) with the help of other villagers took the deceased to Firozabad Hospital, where he was declared brought dead. Leaving the dead body of the deceased at the Hospital, Lala Ram (P.W. 2) along with other persons came to Police Station, Firozabad North, where he dictated report to the Head Constable. Chik F.I.R. (Ex. Ka-1) was prepared by Head Constable Surendra Kumar Sharma (P.W. 4) at 1.45 p.m. who made an endorsement of the same at G.D. report (Ex. Ka-3) and registered a case u/s 302, I.P.C. against the Appellant.

4. Investigation of the case was taken up by Sri Ranvir Singh ; Investigating Officer (P.W. 7). The Investigating Officer interrogated Lala Ram (P.W. 2) and Head Constable Surendra Kumar Sharma (P.W. 4) at the Police Station and thereafter reached the place of occurrence, where he interrogated Km. Mithilesh (P.W. 1). He inspected the place of occurrence and prepared site plan (Ex. Ka-5). The Investigating Officer collected blood stained and simple earth from the spot and prepared recovery memo (Exs. 7 and 8). The Investigating Officer also recovered blood stained "gandasa" and prepared recovery memo (Ex. Ka-6). Thereafter, Investigating Officer reached at S.N.M. Hospital, Firozabad, where he conducted inquest of the dead body of the deceased and prepared inquest report (Ex. Ka-7) and other relevant papers. He sealed the dead body and handed over to Constable Jagdish Singh (P.W. 5) for taking it to mortuary. The articles recovered from the spot were sent to Chemical Examiner for analysis and report.

5. Autopsy on the dead body of deceased was conducted on 17.5.1979 by Dr. B. S. Bisana (P.W. 3), who found as many as four incised wounds on the neck of deceased and cause of death shock and haemorrhage, as a result of ante-mortem injuries. He prepared post-mortem report (Ex. Ka-2).

6. The Appellant was absconding and process u/s 82/83, Cr. P.C. were executed. On completion of investigation, the Investigating Officer challaned the Appellant as an absconder.

7. Cognizance of the case was taken by the Magistrate, who on appearance of the Appellant committed the case to the Court of Sessions.

8. The Appellant was charged with the offence punishable u/s 302, I.P.C. He pleaded not guilty and contended that he had a grove, which was forcibly taken by Lala Ram (P.W. 2) and his brother. He demanded back his above grove from them. But they did not return back and had also beaten him. They asked to execute sale deed of the grove in their names and falsely implicated him in this case.

9. The prosecution in support of its case examined Km. Mithilesh (P.W. 1) aged about 10 years, Lala Ram (P.W. 2) as witnesses of fact, besides Dr. B. S. Bisana (P.W. 3), Head Constable Surendra Kumar Sharma (P.W. 4), Constable Jagdish Singh (P.W. 5), Bachachan Singh (P.W. 6) and Ranvir Singh, Investigating Officer (P.W. 7). The Appellant did not adduce any evidence in his defence.

10. The learned Sessions Judge on considering evidence of the prosecution held that the prosecution has successfully proved the guilt of the Appellant for the offence punishable u/s 302, I.P.C. With these findings, he convicted and sentenced him as mentioned above.

11. Aggrieved with above conviction and sentence, the Appellant preferred this appeal.

12. During pendency of the appeal, the Appellant absconded. Bail granted to the Appellant was cancelled and non-bailable warrants were issued against him. In pursuance of above order, he was arrested on 21.12.2002 and was sent to jail. Sri B. P. Gupta, learned Counsel for the Appellant, who had filed appeal had died. Notices were issued to the Appellant to engage another counsel, but since he was in jail, he did not engage any counsel. This Court, therefore, appointed Sri Ashwani Kumar Awasthi, advocate as Amicus Curiae to argue appeal on behalf of the Appellant.

13. We have heard Sri A. K. Awasthi, learned Amicus Curiae for the Appellant and learned A.G.A. for the Respondent and have perused the evidence on record.

14. Death and cause of death of Ram Das deceased is not disputed. According to evidence of Lala Ram (P.W. 2) the deceased, in injured condition, was being taken to Firozabad Hospital, but he died in the way and on reaching the Hospital, the doctor declared him brought dead. Dr. B. S. Bisana (P.W. 3) conducted autopsy on the dead body of the deceased and found following ante-mortem injuries on his person:

(1) Incised wound 15 cm. x 2 cm. x bone deep on the back of neck extending towards right side.

(2) Incised wound 16 cm. x 2 cm. x bone deep on the back of neck 1 cm. above Injury No. 1, more towards right side.

(3) Incised wound 14 cm. x 3 cm. x bone deep on the back of neck 1.5 cm. above Injury No. 2, more towards right side.

(4) Incised wound 12 cm. x 2 cm. x bone deep on the back of neck 2 cm. above from Injury No. 3 more towards right side.

15. He further stated that internal examination showed that second, third and fourth cervical vertebrae were fractured. The stomach contained semi-digested food. Small intestine contained digested food. Large intestine contained faecal matters and cause of death was shock and haemorrhage as a result of above injuries.

16. The Appellant has not challenged the above medical evidence. As such death and cause of death of Ram Das deceased has been established.

17. It was contended by the learned Amicus Curiae that dead body was produced before Dr. B. S. Bisana (P.W. 3) in unsealed condition, while according to evidence of Investigating Officer, Sri Ranvir Singh, he had sealed the dead body. This shows that the dead body on which Dr. Bisana conducted post-mortem did not belong to the deceased. It is true that in the post-mortem report (Ex. Ka-2) it is mentioned that unsealed dead body was received at 5.10 p.m. and Ranvir Singh, Investigating Officer stated that he sealed the dead body and handed over to Constable Jagdish Singh (P.W. 5) for taking it to post-mortem. No question was put to Dr. Bisana (P.W. 3) regarding this fact. Dr. Bisana had further stated that dead body of Ram Das Jatav was produced before him by Constable Jagdish Singh (P.W. 5), who had identified the dead body. Constable Jagdish Singh (P.W. 5) had also stated that Sri Ranvir Singh had handed over dead body of deceased to him and he escorted it and produced before doctor and identified before him. No question was put to him whether the dead body was sealed or unsealed. It was also not questioned from the Investigating Officer that he had dispatched unsealed dead body of the deceased. In these circumstances, it appeared that word "un" before word "sealed" was inserted subsequently because had it been a fact, the question must have been put to Dr. Bisana, who was examined first in the Court, to Constable Jagdish Singh (P.W. 5) and the Investigating Officer Sri Ranvir Singh (P.W. 7), who were examined subsequently in the Court. There is categorical evidence on record that the Investigating Officer conducted inquest of dead body of Ram Das deceased and sealed it and handed over to Constable Jagdish Singh (P.W. 5), who escorted it to mortuary and produced and identified before the doctor and there is nothing on record to show that dead body of deceased was changed. As such it is also established that dead body on which Dr. Bisana (P.W. 2) conducted autopsy was that of Ram Das deceased.

18. Date and time of occurrence are also not disputed. According to prosecution occurrence took place on 16.5.1979 at about 12-12.30 p.m. Lala Ram (P.W. 2) stated that immediately after the occurrence, he took the deceased to Firozabad Hospital, but doctor declared him dead. Thereafter, he came to Police Station and dictated report to the Head Constable. Report was lodged at 1.45 p.m. on same day and the Investigating Officer reached the spot on same day. Dr. B. S. Bisana (P.W. 3) stated in his evidence that death of deceased would have occurred on 16.5.1979 between 12-12.30 p.m. Above evidence adduced by the prosecution has not been challenged. Thus, it is established that the occurrence took place on 16.5.1979 at about 12-12.30 p.m.

19. The prosecution alleged that occurrence took place in the outer chhappar of the deceased, where he was sleeping. It was suggested to Lala Ram (P.W. 2) and Km. Mithilesh (P.W. 1) that deceased was murdered in his "Khalihan" (thrashing floor). The witnesses denied the above suggestion. Though, it was admitted to Lala Ram

(P.W. 2) that the occurrence took place in harvesting season and rabi crops was cut and brought to thrashing floor. He also admitted that male members of the family used to watch their crops in the Khalihan, but he also clarified that they remained in the Khalihan, when there was work of thrashing and they used to go to their house to take their food, etc. Assuming that deceased and Lala Ram (P.W. 2) had been at their Khalihan in the earlier hour of the day, they would have come to their house to take their food and possibility that after taking food, they were taking a nap cannot be easily ruled out. Moreover, the Investigating Officer had recovered blood from the chhappar of the deceased and no blood was shown in or recovered from the Khalihan. The presence of blood in the chhappar supported the ocular testimony of Km. Mithilesh (P.W. 1) and Lala Ram (P.W. 2) that the occurrence took place in the chhappar of the deceased.

20. Learned Amicus Curiae contended that the prosecution had not alleged any motive and without any motive, the Appellant had no occasion to commit the murder of the deceased. It is true that no motive had been alleged by the prosecution, but the prosecution had relied on ocular testimony of Km. Mithilesh (P.W. 1) and Lala Ram (P.W. 2) and where there is eye-witness account of occurrence, the motive recedes in the background and has no important role to play. In the case of direct evidence of ocular witnesses, the absence of motive is not material. Moreover, the Appellant had stated in his statement u/s 313, Cr. P.C. that Lala Ram and his brother had taken his grove and when he demanded back his grove from them, they caused injuries to him. It is also clear from the suggestion given on behalf of Appellant to Lala Ram (P.W. 2) that previously the name of ancestors of Appellant was also recorded in the agricultural plots jointly with the ancestors of deceased, but during the minority of the Appellant, in Consolidation proceeding, the father of the deceased, by paying money to Vidya Ram and Modi Ram, brother and uncle of the Appellant got the name of ancestors of the Appellant expunged from revenue records. These facts suggest that the Appellant was having grudge with the deceased, who was instrumental in taking his property during his minority and had motive to commit murder of the deceased.

21. The prosecution in order to establish the manner of occurrence and complicity of Appellant relied on ocular testimony of Km. Mithilesh (P.W. 1) and Lala Ram (P.W. 2). Km. Mithilesh (P.W. 1) daughter of Ram Das deceased stated that at the time of occurrence she was in her "Angan". The deceased was sleeping in the outer chhappar of his house. Hearing shrieks of her father she along with her uncle Lala Ram (P.W. 2) and mother Smt. Bhoodevi came out of her house and saw that the Appellant was inflicting "gandasa" blows on the neck of her father. Observing them the Appellant threw the "gandasa" into a drum kept in the chhappar and ran away. She was knowing the Appellant from before as he had his house after 2-3 houses of her house. She also identified the Appellant in the Court.

22. Lala Ram (P.W. 2) stated that at the time of occurrence, his brother Ram Das deceased was sleeping in his outer chhappar and he was sleeping inside the "Aangan". Hearing shrieks of his brother Ram Das, he rushed towards the chhappar and saw that Appellant was inflicting "gandasa" blows on the neck of the deceased. Seeing him, Km. Mithilesh (P.W. 1) and Smt. Bhoodevi wife of deceased, the Appellant ran away throwing "gandasa" into a drum kept in the chhappar. He chased the Appellant up to some distance, but he could not be apprehended. He came back to the chhappar. By that time, several persons of the village had assembled, whom he told that Appellant had inflicted "gandasa" blows on the deceased. He took the deceased, who was in injured condition to Hospital, where he was declared by the doctor brought dead. Then, he came to police station and dictated report to the Head Constable.

23. The learned Amicus Curiae contended that Km. Mithilesh (P.W. 1) aged about 10 years was a child witness and she gave tutored statement and, therefore, her evidence is not worth reliable.

24. Before examination of Km. Mithilesh (P.W. 1) in the Court, the learned Sessions Judge had tested the memory of the witness by putting certain questions and recorded a certificate that from the above questions and answers given by the witness, it is evident that she understood the questions put to her and could reply them. The Apex Court in the case of Datta Ramrao Sakhare and Ors. v. State of Maharashtra (1997) 2 SCJ 80, held that a child witness, if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words, even in the absence of oath, the evidence of a child witness can be considered u/s 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and creditability thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case, the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however, as a rule of prudence, the Court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record.

25. In the case of State of Tamil Nadu v. Karuppusamy and Ors. 1992 ACC 467 (SC), Rajamani, an 11 year old girl was an eye-witness. it was observed by the Hon"ble Supreme Court, regarding her testimony, that as regards the evidence of Rajamani, she being a child witness and having no motive against the accused, her evidence ought to have been accepted. So long as the trial court had found that she was in a position to discern as to what was truth and what was falsehood, the failure to administer oath would be of no consequence. She witnessed a ghastly murder, where her father himself was killed.

26. We have gone through the statement of Km. Mithilesh (P.W. 1) recorded in question answer form, the questions put to her and its answers. Her evidence shows that she was aged about 10 years at the time of her evidence and occurrence had taken place about 1-1/2 years before of her statement in the Court and at the time of occurrence, she would have been aged about 8-1/2 years and 9 years. A child of such age is capable of perceiving things and reproducing the same. She had given reasonable answers to all questions put to her in her examination-in-chief as well as in cross-examination. It shows that the witness had attained maturity to perceive, understand and express things. The own father of the witness was murdered in broad day light at about 12.30 p.m. The number of injuries on the person of the deceased shows that he must have raised cry and witness being in the "Aangan" of house must have heard the shrieks of her father and had rushed to the chhappar, where her father was lying. The witness had seen ghastly murder of her father, which must have been the rudest shock of her life and she cannot forget what she observed till her life. There is also nothing on record to show that she was tutored by her mother and uncle. The facts and circumstances of the case narrated above further indicated that in all probabilities hearing shrieks of her father, she must have come out of her "Aangan" and had seen the occurrence and what she had seen would be easily remembered by her. Furthermore, the evidence of the witness is corroborated by medical evidence and other circumstances of the case. The Appellant was well known to her, as he resided only after 2-3 houses of her house and she must be knowing him from before. The occurrence had taken place in the broad day light in the month of May. Therefore, she had full opportunity to observe the occurrence as well as to recognize the assailant. Therefore, we find no ground to disbelieve the evidence of child witness Km. Mithilesh (P.W. 1).

27. Lala Ram (P.W. 2) is none else, but real brother of the deceased. At the time of occurrence, he was also in his "Aangan" and hearing shrieks of the deceased, he must have come out of his "Aangan" and had seen the occurrence. The number of injuries caused on the deceased also indicated that some time had taken in causing as many as four injuries on the neck of deceased and in this process, the witness had seen the actual assault on the deceased. The witness further stated that the Appellant while running away from the spot threw blood stained "gandasa" into a drum kept in the chhappar. The above gandasa (Ex.-1) was recovered by the Investigating Officer when he visited the spot. The above gandasa was shown to Dr. Bisana at the time of his evidence and he stated that injuries on the neck of deceased, in all probabilities, could have been caused by "gandasa" (Ex. 1). Lala Ram (P.W. 2) had further stated that he chased the Appellant, but he could not be apprehended. The witness had also taken the deceased to the hospital and after declaration by the doctor that he was dead, he left the dead body in the hospital and lodged oral report. All the above facts and circumstances of the case as well as medical evidence indicate that presence of Lala Ram (P.W. 2) on the spot was natural, probable and he had opportunity to see the occurrence and recognize the

assailant, who was none else, but of his own village. Nothing had been shown that witness had any motive to falsely implicate the Appellant.

28. It was suggested to Lala Ram (P.W. 2) that Ram Das deceased was an ill-tempered person and he often quarrelled with the persons of the village. That he had also enmity with Raghurai and Babu Ram of village Ramgarh, who had murdered him and threw his dead body in the well of Ram Roop. It was also suggested that father of deceased had executed will deed in respect of his properties in favour of Smt. Devam, wife of his brother Siya Ram. The witness repelled the above suggestions and there is nothing on record to prove the above suggestions. There is also nothing in the evidence of Dr. Bisana (P.W. 3) that there was any sign on the dead body to show that it had been thrown in the well. Therefore, above suggestion had no legs to stand. As mentioned above, the medical evidence supported the ocular testimony.

29. The learned Amicus Curiae contended that the Investigating Officer had not shown the place of recovery of gandasas in the site plan, which shows that its recovery was fake. We have gone through the site plan and found that the Investigating Officer had shown the drum kept in the chhappar in the site plan. There is categorical evidence of ocular witnesses as well as of the Investigating Officer that "gandasas" were thrown by the Appellant into the drum kept in the chhappar. It was also pointed out that the Investigating Officer had not mentioned the description of "gandasas" in the recovery memo. Gandasas were sealed on the spot and were exhibited in the Court and, therefore, non-description of gandasas in the recovery memo was not fatal to the prosecution story. Moreover, the above gandasas were sent to Chemical Examiner for analysis and report and the report of Chemical Examiner (Ex. Ka-13) shows that the gandasas (Item No. 2) contained blood. The report of Serologist (Ex. Ka-12) also shows that gandasas (Item No. 2) contained human blood. The presence of human blood on the gandasas established that it was weapon of assault and injuries on the person of deceased were caused by it.

30. In this way, the evidence of ocular witnesses, which finds corroboration from medical evidence, F.I.R. and other circumstances is worthy of credence.

31. In view of our above discussions and observations, we find that prosecution had successfully proved the guilt of the Appellant for the offence punishable u/s 302, I.P.C.

32. The appeal, thus, bears no force and is accordingly, dismissed. The conviction and sentence of the Appellant awarded by the trial court are confirmed. The Appellant is in jail. He shall be kept there to serve out the sentence awarded by the trial court and confirmed by this Court.