(2003) 04 AHC CK 0263

Allahabad High Court

Case No: Criminal Jail Appeal No. 965 of 2000

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

Date of Decision: April 25, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 307, 324, 34, 452

Citation: (2003) 3 ACR 2239

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

Bench: Division Bench

Advocate: Ram Babu Sharma, Amicus Curiae, for the Appellant; A.K. Verma, A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

K.N. Ojha, J.
This appeal has been preferred against the order of conviction and sentence dated 26.11.1999 passed by learned v. Ith Additional Sessions Judge, Azamgarh in Session Trial No. 57 of 1993, by which Appellant Jagarnath has been convicted u/s 302 read with Section 34, I.P.C. Section 307 read with Section 34, I.P.C. and Section 452, I.P.C. and has been sentenced to life imprisonment and also a fine of Rs. 10,000 u/s 302, I.P.C. read with Section 34, I.P.C. and in case of non-deposit of fine to further undergo rigorous imprisonment of 3 years. He has been sentenced to undergo life imprisonment u/s 307, I.P.C. read with Section 34, I.P.C. and also fine of Rs. 5,000 and in case of non-deposit of fine to further undergo rigorous imprisonment of 2 years. u/s 452, I.P.C. he has been sentenced to rigorous imprisonment of 5 years along with a fine of Rs. 2,000 and in case of non-deposit of fine to further undergo rigorous imprison-ment of one year.

2. Learned Counsel Sri Ram Babu Sharma, amicus curiae for the Appellant and Sri A. K. Verma, learned Additional Government Advocate have advanced arguments and we have gone through the record.

3. According to prosecution, murder of Ramjanam Chauhan, his wife Smt. Kanti Devi and his son Raju aged about 6 or 7 years, resident of village Dilshadpur, P.S. Jeanpur, district Azamgarh was committed by Appellant and his two brothers Baijnath and Shanker, who are cousins of Ramjanam Chauhan, in the night of 6/7.8.1992 at about 3 a.m. F.I.R. of which was lodged by Ramjanam Chauhan under Sections 302, 307 and 324, I.P.C. at police station Jeanpur which is at the distance of 9 k.m. from the place of occurrence. The F.I.R. was lodged by Ramjanam Chauhan because by that time he was alive while his wife and son died on the spot. In F.I.R. it was written that Ramjanam Chauhan, his wife Smt. Kanti Devi and his son Raju were sleeping in their house after taking night meal. His two sons, Raju aged about 6 or 7 years and Suresh aged about one year were sleeping with their mother Smt. Kanti Devi in the fateful night. He was the only son of his father. Therefore, Appellant and his two brothers, (his cousins) wanted to usurp his property and with this motive Baijnath armed with country made pistol, Shanker with gandasa and Jagarnath with hansua came inside his house, light of glowing lantern was there inside their house. The assailants started to cause injuries to them. On the alarm of his wife and children, Ramjanam Chauhan ran outside the house. Then witnesses Rajaee Pradhan, Chandrika, Jagaee and others reached the spot with lathis and torches. Ramjanam fell down near the house of Jagaee. He was told that his wife was killed. One of his sons, had concealed himself at some place and he escaped unhurt. But later Ramjanam Chauhan and his son Raju who had sustained serious injuries also died. Injuries of Ramjanam Chauhan were examined by Senior Medical Officer, District Hospital, Azamgarh, on 7.8.1992 at 10 a.m. and following injuries were found on his body:

(1) Incised wound 2.5 cm. - 0.5 cm. - cavity deep. Right side Ant. aspect of neck 4.5 cm. above from medial end of right clavicle, margin clean cuts.

(2) Incised wound 1 cm. - 0.5 cm. - muscle deep Ant. aspect of right side neck 2.5 cm. above from right clavicle, margin irreg. bleeding present.

(3) Incised wound 4.2 cm. - 0.5 cm. - muscle deep 2 cm. lateral to injury No. 2 bleeding present.

(4) Incised wound 1 cm. - 0.5 cm. - muscle deep over right shoulder 2 cm. above and lateral to injury No. 4.

(5) Firearm wound of entry (multiple) in area of 17 cm. - 7 cm. on right side face and nose size 0.2 cm. small and 0.3 cm. big. No blackening.

(6) Incised wound 3 cm. - 1.5 cm. post aspect of right shoulder joint and small multiple wound all around the wound .7 cm. - .7 cm. in area. No blackening.

(7) Incised wound 2.5 cm. - 2 cm. - muscle deep on left middle finger on distal phalanx.

4. His son Raju aged about 6 or 7 years was also medically examined by the same doctor on 7.8.1992 at 10.50 a.m. and following injuries were found on his body:

(1) Incised wound 7 cm. - 5 cm. - muscle deep left side head 7 cm. above from left ear. Margin clean cut.

(2) Incised wound 8 cm. - 1 cm. - muscle deep post aspect of left shoulder. Margins clean cut. Bleeding present.

(3) Incised wound 5.5 cm. - 2 cm. - bone deep left scapular region 3 cm. below from injury No. 2. Margin clean cut. Bleeding present.

(4) Incised wound 5.5 cm. - 1.5 cm. - bone deep left side back 5.5 cm. below from left shoulder joint. Margin clean cut. Bleeding present.

5. But since the condition of Ramjanam Chauhan was serious, his dying declaration was recorded in District Hospital Azamgarh in surgical ward on bed No. 10 on 7.8.1992 at 10 p.m. The statement was recorded by Bahadur Prasad, Nyaik Magistrate/ Tehsildar and certified that Ramjanam Chauhan was sound enough to make statement was given by Dr. R. K. Chitranshi, who was then posted in District Hospital, Azamgarh.

6. Later on Ramjanam Chauhan died. Post-mortem of his dead body was done on 12.8.1992 at 4 p.m. in mortuary of District Hospital Azamgarh. Rigor mortis was present and following ante mortem injuries were found on his body:

(1) Septic wound 3 cm. - 1 cm. - margins. Pus present on right side of neck.

(2) Healed wound 1 cm. - 0.5 cm. on left side of neck.

(3) Healed wound 4 cm. - 1 cm., 2 cm. latter to injury No. 2.

(4) Healed wound 1 cm. - 0.5 cm. on right shoulder joint.

(5) Injury on right side of chest.

(6) Septic wound 4 cm. - 2 cm. on right scapula.

Both the intestines were full of gases and faecal matter.

In the opinion of doctor death was due to septic shock resulting from ante mortem injuries.

7. Post-mortem examination on the dead body of Smt. Kanti Devi, aged about 30 years was done in mortuary of District Hospital, Azamgarh on 8.8.1992 at 1.15 p.m. and following ante mortem injuries were found on his body:

(1) Stab wound 3 cm. - 1 cm. Trachea cut through and through left side.

(2) Stab wound right side chest 3 cm. - 2 cm. - cavity deep.

(3) Stab wound on left side chest 2 cm. - 1 cm. - cavity deep.

(4) Incised wound 3 cm. - 1 cm. on left elbow.

(5) Penetrating wound 3 cm. - 1 cm. - muscle deep near injury No. 1.

(6) Incised wound 2 cm. - 1 cm. on left side near injury No. 5.

(7) Incised wound.

Gas and faecal matter were present in both the intestines.

In the opinion of doctor death of Smt. Kanti Devi was due to shock caused by anti-mortem injuries.

8. Post-mortem examination on the dead body of Raju, aged about 7 years was done in the mortuary of District Hospital, Azamgarh on 8.8.1992 at 2 p.m. and following ante mortem injuries were found on his body:

(1) Stab wound 3 cm. - 2 cm. - cavity deep, margins clear cut. Obliquely, healed on right side chest.

(2) Stab wound 2 cm. - 1 cm. on exploration. Trachea cut through and through, margin clear cut.

(3) Stab wound 5 cm. - 2 cm. - muscle deep on left side of upper part of abdomen.

(4) Stab wound 2 cm. - 1 cm. - muscle deep on iliac fossa.

In the opinion of doctor the death was due to shock caused by ante mortem injuries.

9. After investigation charge-sheet was submitted. Charges were framed against the Appellant Jagarnath and his two brothers Baijnath and Shanker on 3.5.1992 by I Vth Additional Sessions Judge, Azamgarh under above mentioned sections. Accused denied their participation in the crime. Prosecution examined P.W. 1 Rajai and P.W. 2 Jagai as eye-witnesses of the occurrence. P.W. 3 Constable Lallu Pandey has stated that he had carried dead body to the mortuary after inquest report was prepared. P.W. 4 Dr. R. P. Singh had performed autopsy on the body of Ramjanam Chauhan. P.W. 5 Bahadur Prasad, Nyaik Magistrate/ Tehsildar, district Azamgarh, recorded the statement of dying declaration of Ramjanam Chauhan in Surgical ward in District Hospital Azamgarh, because his condition was serious. P.W. 6 Dr. M. P. Chaurasiya, performed autopsy on the dead body of Smt. Kanti Devi in the mortuary of District Hospital Azamgarh. P.W. 7 Dr. R. K. Chitranshi, who was present at the time of dying declaration of Ramjanam Chauhan recorded by Naib Tehsildar on 7.8.1992, certified that Ramjanam was mentally fit for making statement. P.W. 8 is Moharrir Ram Sudhar, who prepared chick report of Ramjanam Chauhan by visiting police station on 7.8.1992 at 8.15 a.m.

10. The two co-accused absconded during the trial and their case was separated.

11. After appreciating the evidence of the prosecution, the learned Additional Sessions Judge arrived at the conclusion that in order to use the property of Ramjanam Chauhan, Appellant committed murder of Ramjanam Chauhan, his wife and his son. But since Ramjanam Chauhan was alive for some time, his dying declaration was recorded by the Magistrate in presence of the doctor and his dying declaration supported by the eye-witnesses Rajaee (P.W. 1) and Jagaee (P.W. 2) was sufficient to bring guilt home to the Appellant under above mentioned charges and therefore order of conviction and sentences were passed.

12. Accused Appellant has denied his participation in the crime. It is alleged that some one killed Ramjanam Chauhan and his family members in the night and he has been falsely implicated in the crime.

13. The dying declaration has been proved by the Naib Tehsildar and the doctor has certified sound mental condition of Ramjanam Chauhan. P.W. 1 Rajaee and P.W. 2 Jagaee are of the same village and their houses are adjoining to the house of deceased. Hence on alarm they had occasion to reach the spot and see the occurrence. The occurrence took place on 7.8.1992 at 3.00 a.m. and the police station is at a distance of 9 km. from the scene of the occurrence. F.I.R. was lodged by name against the Appellant in the same morning at 8.15 a.m. The motive is evident that Ramjanam was the only son of his father and the Appellant was his cousin. Appellant and his brother wanted to usurp the property of the deceased. There was light of lantern and torch in which the accused were seen. Thus, the occurrence of commission of murder as held by the Additional Sessions Judge is proved against the Appellant.

14. The learned Counsel for the Appellant submits that no piercing wound can be caused by hansua. It is also submitted that lacerated wounds were found on the body of victim. But in F.I.R. it is written that injuries were caused with firearm and sharp edged weapon. It is further submitted that since death of these three persons was due to septicemia, hence death did not occur due to ante mortem injuries mentioned in the post-mortem examination report and therefore, it is submitted that the statement of Ram Janam Chauhan does not amount to dying declaration. It is further submitted that there is contradiction in the statements of P.W. 1 Rajaee and P.W. 2 Jagaee. It is further submitted that the Appellant is not a married person. He would not commit the murder of three persons for property.

15. Ramjanam Chauhan had seen the Appellant in the light of lantern which was glowing inside the house. There was light of torch of witnesses. There was blackening of firearm injuries. It means injuries were caused from close range, meaning thereby that the victim Ramjanam Chauhan and eye-witnesses had occasion to see the culprits causing injuries. When Ramjanam Chauhan along with his wife and children was sleeping inside his house, it cannot be believed that injuries were caused to these persons, his wife and child

died and still Ramjanam did not wake up. It means Ramjanam had occasion to see the real culprits who were causing injuries to his family members. Therefore, the statement was made by him in surgical ward of District Hospital Azamgarh, has rightly been taken to be true. Ramjanam Chauhan was seeing these persons because they were causing injuries to him and his family members from a close range. Therefore, his statement in the form of dying declaration which has been recorded by P.W. 5 Naib Tehsildar Bahadur Prasad cannot be doubted. P.W. 5 Bahadur Prasad has stated that he was posted as Naib Tehsildar at District Azamgarh. It was stated that Ramjanam Chauhan aged about 30 years was brought and admitted at Bed No. 10 of Surgical ward in District Hospital Azamgarh. It is also stated that he was in a position to make statement and thumb impression of Ramjanam Chauhan was taken on the statement. Dr. R. K. Tripathi certified that Ramjanam Chauhan was mentally sound for making statement. Naib Tehsildar Bahadur Prasad has stated that Ramjanam had stated that injuries were caused to him with knife and country made pistol. He has also stated that at the time when the statement was made Ramjanam was in his senses. P.W. 7 is Dr. R. K. Chitranshi. He has stated that the statement of Ramjanam was recorded in his presence by Naib Tehsildar on 7.8.1992. He deposed that he had examined Ramjanam at the time he was making dying declaration and found that he was mentally fit. He was fit to make statement about the occurrence. After the statement of Ramjanam was recorded by Naib Tehsildar, he certified in his own hand writing that Ramjanam was in position to make dying declaration. Thus, the victim Ramjanam had occasion to see the accused persons. He was examined by doctor and his statement was recorded by Naib Tehsildar/Magistrate. Thus, dying declaration is worthy to be relied upon.

16. The learned Counsel for the Appellant, amicus curiae Sri Ram Babu Sharma has placed reliance on Bhaiyan v. State of M.P. 1978 SCC 54, in which it has been held that if there is discrepancy between oral statement and dying declaration, it is not safe to act upon such dying declaration. Another ruling cited by the learned amicus curiae is Banka Naiyaku and Ors. v. State of Orissa 1976 SCC 417, in which it was held by the Hon''ble Supreme Court that the conviction passed on the basis of dying declaration cannot stand if medical testimony does not corroborate and it contradicts the dying-declaration. Another ruling cited by the learned amicus curiae is State of Assam v. Mafizuddin Ahmed 1983 SCC 325, in which it has been held by Hon''ble the Supreme Court that if truthfulness of dying declaration is beyond doubt, conviction can be based solely upon it without requiring any corroboration.

17. Thus the law propounded in above three rulings makes position of law manifestly clear that conviction can be made on sole dying declaration provided it is worthy to be relied on. In instant case, the mental condition of the victim had been certified by the doctor and his statement was recorded by the Magistrate. The deceased made specific statement against the Appellant that when his family members were being injured, he ran to their rescue and he also was injured with hansua. Post-mortem examination report shows that seven ante-mortem injuries were caused to Ramjanam aged about 30 years.

Injury No. 1 was caused on right side of neck, it was by sharp edged weapon. Injury caused to Raju are four in number and all these injuries are in the nature of incised wounds. These injuries are on left shoulder, scapular region and left side back. Post-mortem examination report of Raju aged about 7 years shows that four stabbed wounds were caused to him. Post-mortem examination report of Smt. Kanti Devi, wife of Ramjanam shows that as many as seven injuries were caused to her out of which two were incised wounds and five were stabbed wounds. It has been submitted by the learned amicus curiae that hansua is such a weapon that incised wound cannot be caused. It is a weapon to reap the crop. It means if the injuries are caused with pointed portion of the weapon penetrating wound will be caused. But if after causing injuries the weapon is dragged incised wounds may be caused. Injuries of both nature find place on the body of abovementioned victims which indicates that Appellant actively participated in the commission of the crime. There is no contradiction in the ocular testimony of the victims, dying declaration and medical evidence. Therefore, dying declaration made by Ramjanam Chauhan is an evidence on which the learned Sessions Judge has rightly placed reliance in holding that the Appellant committed murder of these persons by entering the house of the victims.

18. There are two eye-witnesses also of the occurrence. They are P.W. 1 Rajaee, P.W. 2 Jagaee, both sons of Bahal, resident of village Dilshadpur, P. S. Jeanpur, district Azamgarh. They have stated that about 6 or 7 years before, the occurrence did take place in the night. They were sleeping on different cots in a room which is in the east to the house of Ramjanam Chauhan. There is only a path of about 10 or 12 steps in breadth between their houses and the house of Ramjanam. It is stated by P.W. 1 Rajaee that it was about 3.00 a.m. when he came back after responding call of nature. On hearing the shrieks of Ramjanam, he took torch and lathi in his hand and reached the spot. Jagaee and Chandrika also ran to the spot. They saw Baijnath with country made pistol, Jagarnath with gandasa and Shanker with hansua and Baijnath fired on Ramjanam. P.W. 2 Jagaee has stated that Baijnath was armed with country made pistol, Shanker was armed with gandasa and Jagarnath with Hansua. Though there is contradiction to the statement of witnesses P.W. 1 and P.W. 2 in respect of the weapons in the hand of Jagarnath and Shanker but Hansua and gandasa are weapons of about the same nature. Therefore, if victims are running accused are chasing the victims and it is the occurrence of night, it is not expected from a witness that he will see the weapon in the hand of the accused persons with such minute observation that the shape and edge of each weapon can exactly be noted. Weapon is in the hand of the accused. Therefore, if there is some difference in the statement about the weapons, it cannot be taken to be sufficient to disbelieve the statements of the witnesses when the weapons are almost of same nature with unnoticeable difference. We have gone through the statements of the witnesses. Their presence on the spot is natural. When three persons are being killed, alarm is being raised from a distance of 10 or 12 steps, arrival of these two witnesses Rajaee and Jagaee on the scene of the occurrence cannot be doubted. Their statements are natural consistent and do not suffer from any material contradiction. These statements support

the dying declaration which was made by the victim Ramjanam. Thus, we fully subscribe to the judgment delivered by the learned Additional Sessions Judge that Appellant along with two others committed murder of these three persons in furtherance of their common intention.

19. It has been submitted by the learned amicus curiae that the Appellant is not a married person. He has no family member. He has no motive to commit murder of these persons. Ramjanam Chauhan who was just near to death and had no reason to falsely implicate the Appellant, has made specific statement against Jagarnath. It is not expected that he would involve his cousin in order to harass him. Meanness and greed has no limit. It is no improbability that because unmarried, the Appellant would not commit this crime.

20. The learned amicus curiae has further submitted that Gaon Pradhan election did take place in the village and Rajaee had opposed Jagarnath. If election had taken place between Appellant Jagarnath and witness Rajaee, Ramjanam had no motive to make dying declaration against Jagarnath and his two brothers. The murder was committed by the Appellant finding Ramjanam being the only male member in the family and a weak one.

21. In our view, the appeal has no merit and is liable to be dismissed.

22. The appeal preferred by Jagarnath is dismissed. Appellant Jagarnath is in jail. He will remain in jail to serve out the sentence awarded to him by the learned v. Ith Additional Sessions Judge, Azamgarh.

23. Sri Ram Babu Sharma learned amicus curiae, who has sincerely conducted the case is entitled for Rs. 1,000 as his fee.

Let a copy of the judgment along with record be sent to the court below for compliance and report to this Court within two months.