(2017) 04 AHC CK 0228

ALLAHABAD HIGH COURT

Case No: 641 of 1986

MEWA RAM AND OTHERS		APPELLANT
	Vs	
STATE OF U P		RESPONDENT

Date of Decision: April 28, 2017

Acts Referred:

- Indian Penal Code, 1860, Section 302 - Punishment for murder

Hon'ble Judges: Arvind Kumar Tripathi, Prabhat Chandra Tripathi

Bench: Division Bench

Advocate: Brijesh Sahai, Bharat Singh, Kuldeep Kumar Dixit, Om Prakash Singh

Final Decision: Dismissed

Judgement

1. We have heard Sri Om Prakash Singh, learned counsel for the appellants and Sri Chandra Jeet Yadav, learned A.G.A. for the State.

2. This criminal appeal has been preferred by the appellants namely, Mewa Ram, Shyam Pal and Shyam Lal against the judgment and order of the then Fourth Additional Sessions Judge, Shahjahanpur dated 20.02.1986 in Sessions Trial No. 469 of 1984, arising out of Case Crime No. 79 of 1984, under Section 302 I.P.C., Police Station Jaitipur, District Shahjahanpur, convicting the appellants under Section 302 I.P.C. and sentencing them to undergo for life imprisonment.

3. The oral F.I.R. in narrow compass is enumerated as below:-

> The informant Mahesh Pal Singh, son of Bhagwant Singh Yadav, resident of Himmatpur, Police Station Jaitipur, District Shahjahanpur on 6.5.1984 at about

7.30 A.M. (morning) gave oral information in the Police Station Jaitipur, District Shahjahanpur that in the intervening night of 5/6.5.1984, he alongwith his uncle Talewar, son of Jangi were sleeping in the courtyard of their house and ahead of his elevated platform near "PAKAD" tree, Mahendra son of Poshakhee was sleeping and Raghunath, resident of Rishipura, Police Station Faridpur, District Bareilly was sleeping in front of the house of Mewa Ram. The southern wall situated in between the house of the informant and house of Mewa Ram was in dilapidated condition. Approximately at the time of mid2 night a shriek was heard from the house of Jai Ram and Mewa Ram, both sons of Natthu Singh Yadav then the informant and his uncle wake-up then Mewa Ram was exhorting and saying to his sons that (he) may not be spared in living condition, how (he) could give the land to others when they were alive. Then in the light of their torches, they saw that Mewa Ram armed with Sword, Shyam Lal son of Mewa Ram armed with Gadasa, Shyam Pal son of Mewa Ram armed with Spear and one unknown person armed with Kanta, were assaulting Jai Ram, which was visible from the dilapidated wall of the informant. At the same time, informant and others made noise then Raghunath and Mahendra also arose and made noise and challenged then Mewa Ram, Shyam Lal, Shyam Pal and their one companion came out of their house and fled away. The accused persons were armed with Sword, Gadasa, Spear and Kanta, whose clothes and weapons were stained with blood, were also seen by Mahendra and Raghunath in the light of their torches. The accused persons were checked but they did not stop and fled away towards south threatening that if somebody would lodge the report, he would meet the same fate. They (informant and others) entered in the house of Mewa Ram and saw that corpse of Jai Ram was lying on the ground upon the quilt soaked with blood and he had breathed his last. His neck was half slit and there were more injuries on his dead body. The reason for murder of Jai Ram was that Jai Ram was residing with the son-in-law of his sister in village Rishipura, Police Station Faridpur, District Bareilly since last three months and 3-4 days ago, he had taken away his buffalo at the place of Raghunath son-inlaw of his sister at Rishipura and one day ago in the evening, he intended to take away his wheat and household goods laden in the bullock cart alongwith son-in-law of his sister to Rishipura and he asked to give him Rs. 2000/- from his brother Mewa Ram before the informant, his uncle Talewar and Raghunath and said to lend the money otherwise he would hypothecate the land to someone else then Mewa Ram told Jai Ram that he would arrange the money in the morning and thereby he stopped him and getting opportunity, in order to usurp the property, Mewa Ram alongwith his sons murdered his brother Jai Ram in the night. Jai Ram was unmarried and issueless. He intended to give his property to Raghunath son-in-law of his sister. Due to this reason, the accused person Mewa Ram murdered his brother Jai Ram. Due to fear, he could not come to the police station in the night. His report be lodged and action be taken.

4. Upon the oral information of the informant, the F.I.R. was lodged in Case Crime No. 79 of 1984 at Police Station Jaitipur, District Shahjahanpur under Section 302 I.P.C. against the named accused persons Mewa Ram son of Natthu Yadav, Shyam Pal and Shyam Lal both sons of Mewa Ram, all residents of village Himmatpur, Police Station Jaitipur, District Shahjahanpur and also against one unknown person.

5. Prosecution has produced the following documentary evidence:-

(1) Chik F.I.R. (Exhibit Ka-1), (2) Copy of G.D. No. 10 (Exhibit Ka-2), (3) Supurdaginama of torches (Exhibit Ka-3), (4) Inquest report of deceased Jai Ram (Exhibit Ka-4), (5) Photo Nash (Exhibit Ka-5), (6) Challan Nash (Exhibit Ka-6), (7) Sample of seal (Exhibit Ka-7), (8) Letter to C.M.O. (Exhibit Ka-8), (9) Fard memo of simple soil, bloodstained soil and a piece of bloodstained quilt (Exhibit Ka-9), (10) Site plan (Exhibit Ka-10), (11) Charge Sheet (Exhibit Ka-11), (12) Postmortem report (Exhibit Ka-12), (13) Copy of G.D. No. 13 (Exhibit Ka-13).

The prosecution has produced following material evidence:-

(1) Sample of simple earth and bloodstained earth (Exhibits-I and II),

(2) Sample of bloodstained part of quilt (Exhibit-III).

The prosecution has produced following oral evidence:-

PW-1 HC No. 185 Raghubir Singh, PW-2 Mahesh Pal Singh, PW-3 Mahendra, PW-4 Sub Inspector Suresh Chandra Katara, PW-5 Dr. S.C. Gupta, PW-6 Constable 511 Rama Shankar and PW-7 Constable Iqbal Hussain.

6. The accused persons have produced following oral evidence in defence:-

DW-1 Anopi and DW-2 Babu Ram.

The accused persons have produced following documentary evidence:-

Voter List of the year 1984 (Exhibit Kha-I) and voter list of year 1975 (Exhibit Kha-II).

7. Learned counsel for the accused persons-appellants has advanced his arguments on the following points:-

(a) The F.I.R. is ante-timed.

(b) Presence of the witnesses at the scene of occurrence is doubtful.

(c) The prosecution has not produced any independent witness.

(d) The first informant was known to the present accused-appellants.

(e) The investigation is partisan, erroneous, baseless and site plan is a total mismatch.

8. The PW-1 Head Constable No. 185 Raghubir Singh has proved the chik F.I.R. (Exhibit Ka-1) and G.D. No. 10 dated 6.5.1984 time 7.30 A.M. (morning) (Exhibit Ka-2).

9. PW-2 informant Mahesh Pal Singh in his examination-in-chief has deposed that Jai Ram (deceased) was his grandfather in relation. He (Jai Ram) was real brother of the accused person Mewa Ram. The accused persons Shyam Pal and Shyam Lal were the sons of the accused person Mewa Ram who were present before the court.

10. The deceased Jai Ram was unmarried and issueless. He had 20 bighas of land in his name. He intended to give the land to Raghunathson- in-law of his sister. Three months before his murder, he used to reside with him (Raghunath). Jai Ram had taken away his buffalo to the place of Raghunath just 4-5 days ago from his murder. He accompanied with Raghunath again came back to carry away his household goods in the bullock cart. Jai Ram had asked for Rs. 2000/- from Mewa Ram otherwise he would hypothecate his

land to someone else. This conversation had taken place before the uncle Talewar and Raghunath. Mewa Ram assured him (Jai Ram) to wait and he would arrange the money in the morning then Jai Ram stayed at his house. After one year and three months had passed, the incident in question took place; when Jai Ram was sleeping in his courtyard, Raghunath was sleeping in front of door at the elevated platform and this witness Mahesh Pal was sleeping in the courtyard of his house. The house of Jai Ram was adjacent to the house of PW-2 Mahesh Pal Singh on the southern side. The southern wall of house of PW-2 Mahesh Pal Singh was in dilapidated condition. At the time of mid night, shrieks were heard from the house of Mewa Ram. PW-2 Mahesh Pal Singh and Talewar wake-up and in the light of their torches they saw that Mewa Ram armed with Sword, Shyam Lal armed with Gadasa, Shyam Pal armed with Spear and fourth accused person, who could not be identified, was armed with Kanta and Mewa Ram was saying that he (Jai Ram) should not be spared and they were assaulting Jai Ram. At the shout of witnesses Mahesh Pal Singh and Talewar, the witnesses Mahender and Raghunath also wake-up. The accused persons came out from their door and fled away towards south. Out of fear, nobody followed them. The accused persons threatened that if someone would lodge the report, he would meet the same fate. Due to fear, he did not go to police station at that time. He reached at about 7.00-7.30 A.M. in the morning at the police station. At the police station "Diwanji" met him where he lodged the F.I.R. orally.

11. PW-3 Mahendra in his examination-in-chief deposed that Jai Ram was his uncle and Talewar was his brother. This incident took place one year four months ago. In the mid-night at the shout of Talewar and Mahesh Pal Singh, he wake-up and in the light of his torch (and) saw that Mewa Ram armed with Sword, Shyam Lal armed with Gadasa, Shyam Pal armed with Spear and fourth unknown person armed with Kanta, came out of their house. Their clothes and weapons were stained with blood when they were followed but they threatened that who would lodge the report, would meet the same fate and thereafter they fled away. Inside the house he saw that blood soaked corpse of Jai Ram was lying on the quilt. The neck of Jai Ram was slit and injury was on the armpit.

12. PW-4 Sub Inspector Suresh Chandra Katara proved the inquest report (Exhibit Ka-4), Photo Nash, Challan Nash, sample of seal and letter to C.M.O. which were marked as Exihibits Ka-5 to Ka-8, bundle of simple earth and bloodstained earth taken from the place of occurrence (Exhibit Ka-9) and bloodstained and simple earth taken from the place of occurrence were marked as material Exhibit-I, material Exhibit-II and part of bloodstained quilt material Exhibit-III. He has also proved the site plan marked as Exhibit Ka-10. He has also proved "Fard Supurdaginama" of torches of witnesses Mahendra and Mahesh Pal marked as Exhibit Ka-3. He deposed that samples of bloodstained earth and simple earth and part of bloodstained quilt were sent to the Chemical Analyst, Agra for chemical examination. The report of chemical examination is also available on record.

13. PW-5 Dr. S.C. Gupta, who conducted the postmortem of the deceased Jai Ram Yadav, has deposed on oath in examination-in-chief as follows:-

On 7.5.1984, he was posted as Senior Pathologist in District Hospital and he conducted the postmortem upon the dead body of the deceased person Jai Ram son of Natthu Yadav, resident of village Himmatpur, Police Station Jaitipur, District Shahjahanpur at 4.00 P.M. in the evening, which was brought by Constable 04 C.P. Iqbal Hussain and Constable No. 649 C.P. Shiv Narayan Mishra, Police Station Jaitipur in a sealed condition and they identified the dead body. The age of the deceased was about 40 years and about 2 days had passed since his death.

14. Postmortem on the dead body of the deceased was conducted by Dr. S.C. Gupta and following injuries were found:-

External Examination:-

Rigor mortis passed off from both the extremities. Postmortem blisters present. Cuticle of skin pealed off at places. Body swollen, foul smelling, maggots crawling in the wounds. Scalp hair can be easily pulled out.

Ante-mortem Injuries:-

(1) Incised wound 28 cm x 3 cm x bone deep on the front and sides of the neck. The trachea muscle of neck and large vessels out. (not opened)

(2) Incised wound 10 cm x 1 cm x bone deep on the right side of face 1 cm below the right ear.

(3) Incised wound 3.5 cm x 1/2 cm x muscle deep on the right side of face 5 cm below injury no. 2 (situated between injury nos. 1 and 2).

(4) Incised wound 15 cm x 2 cm x brain deep on the right side of skull 5 cm above the right ear. The injuries cut the skull bone and brain matter is coming out.

(5) Incised wound 2 ? cm x 1 cm x muscle deep on the back of left wrist.

(6) Incised wound 8 cm x 1 cm on the back of right shoulder tailing present.

(7) Punctured wound 1/2 cm x 1/2 cm with lacerated margin muscle deep on the joint of abdomen 6 cm above the umbilicus. Internal Examination:-

Skull bone cut under injury no. 4. Brain liquified. Base of skull and membrances all NAD. (Thorax) walls, ribs, cartilages pleura larynx, trachea bronchi, right lung, left lung and pericardium all NAD. Heart NAD empty.

(Abdomen) Walls peritoneum, cavity, buccal cavity and pharynx all NAD. Teeth 16/16. Oesophagus cut under injury no. 1. (Stomach) Contains 100 grams semi digested food material. Small intestine NAD contains digested food. Large intestine NAD contains faecal matter. Lever and gall bladder NAD, Pancreas spleen, kidneys, bladder and generation organs all NAD.

Cause of death due to shock and haemorrhage due to ante-mortem injuries.

15. PW-5 Dr. S.C. Gupta also deposed in his examination-in-chief that in the intervening night of 5/6.5.1984 at the time of mid night the death could have taken place and these injuries may be caused by Gadasa, Kanta, Spear and Sword which are sufficient to cause death.

16. PW-6 Constable Ram Shankar Yadav and PW-7 Constable Iqbal Hussain are the formal witnesses.

17. Main alibi which was taken on behalf of the accused-appellants was that at the time of the alleged incident, accused persons Shyam Lal and Shyam Pal were at village Tatarpur attending marriage of sister of their brother-in-law whereas the accused person Mewa Ram had gone to look-after the sugarcane crop in the field.

18. The argument of learned counsel for the accused-appellants that the F.I.R. is ante-timed may be discussed in the light of evidence on record.

19. The chik F.I.R. (Exhibit Ka-1) reveals that the distance between village Himmatpur and Police Station Jaitipur is 9 kilometers. The time of occurrence as mentioned in the chik F.I.R. (Exhbit Ka-1) is 5/6.5.1984 at about mid night and time when the F.I.R. was lodged has been mentioned as 6.5.1984 time 7.30 A.M. in the morning.

20. PW-1 HC No. 185 Raghubir Singh in his cross examination has deposed that there is entry in G.D. regarding carrying of special report by constable No. 421 and this G.D. is dated 6.5.1984. This G.D. relates up to 12 O''clock in the night. Inquest report (Exhibit Ka-4) is dated 6.5.1984 in which time of commencement of inquest is 9.30 A.M. and date and time of conclusion of inquest report is dated 6.5.1984 at 10.30 A.M. Thus argument of ante-timed F.I.R. will have no shattering effect upon the prosecution version.

21. As far as the argument of the learned counsel for the accusedappellants regarding presence of the witnesses at the scene of occurrence is doubtful is concerned, it will also be discussed at evidence available on the record.

22. Learned counsel for the accused-appellants has also further drawn our attention towards contradictions, omissions and discrepancies in the cross examinations of PW-2 Mahesh Pal Singh and PW-3 Mahendra.

23. PW-2 Mahesh Pal Singh and PW-3 Mahendra have narrated the motive behind the alleged crime. This fact has been consistently deposed by the above mentioned witnesses as well as mentioned in the F.I.R. that the deceased Jai Ram was unmarried and issueless. The deceased Jai Ram and accused Mewa Ram; both sons of Natthu Singh Yadav were real brothers. The accused persons Shyam Lal and Shyam Pal both are the real brothers and also both are the real sons of accused person Mewa Ram Yadav. The deceased Jai Ram intended to give his 20 bighas of land to Raghunath son-in-law of his sister with whom he used to reside three months ago from his murder. Jai Ram had also taken away his buffalo from his house to the house of Raghunath 4-5 days ago from his murder. He intended to carry away all his household belongings from his house to the house of Raghunath for which he had also come alongwith bullock cart to carry away his households. Before the intervening night of the incident, Jai Ram asked for Rs. 2000/- from his real brother Mewa Ram Yadav otherwise he (Jai Ram) would hypothecate his land in favour of someone else, he was assured by Mewa Ram to wait till the morning to make arrangements for money. Thereafter Jai Ram stayed in his house where in the intervening night he was murdered by accused persons Mewa Ram Yadav, Shyam Lal Yadav and Shyam Pal Yadav with the help of deadly weapons.

24. Much emphasis has been laid upon by learned counsel for the accused-appellants that PW-3 Mahendra has deposed in the crossexamination that in his thatched mud house in the east-west side there was "BEDAA" in the height of 6-7 feet, more than height of the head, due to which it was not possible to see the alleged scene of occurrence by the witnesses PW-2 Mahesh Pal Singh and PW-3 Mahendra.

25. At the first blush, the argument of the learned counsel for the accused-appellants appears to be attractive but on close scrutiny, it is of no avail because the rustic background of these witnesses should also be kept in mind. They are deposing after

more than of year of the alleged incident. Their testimony found to be natural and trustworthy and not the result of tutoring.

26. The main motive of the alleged crime has been specifically deposed by PW-2 Mahesh Pal Singh in his examination-in-chief that the deceased Jai Ram had no brother other than the accused person Mewa Ram. He (Mewa Ram) was his heir who had to inherit/succeed him (Jai Ram)-deceased.

27. As far as the argument of the learned counsel for the accusedappellants is repelled by the fact that the accused-appellants, the deceased, and PW-2 Mahesh Pal Singh and PW-3 Mahendra belonged to the same family tree and PW-2 Mahesh Pal Singh and PW-3 Mahendra neither bore any enmity with the accused-appellants nor had developed any affinity towards the deceased Jai Ram.

28. No cogent reason could be pointed out by the learned counsel for the accused-appellants for false implication of the accused-appellants under the influence of the local police. It is most improbable that in such type of ghastly crimes, anybody would falsely implicate the innocent persons and spare the real culprits.

29. The main motive behind this diabolical (wicked) crime was the greed of the land which belonged to the deceased Jai Ram.

30. Thus, the ocular testimony of PW-2 Mahesh Pal Singh and PW-3 Mahendra is wholly reliable and trustworthy. We see no reason to disbelieve the testimony of PW-5 Dr. S.C. Gupta. The oral evidence of PW-5 Dr. S.C. Gupta fully supports the prosecution version. The medical evidence of PW-5 of Dr. S.C. Gupta, who conducted autopsy found that the death of Jai Ram had taken place due to ante-mortem injuries and the time of death mentioned in the postmortem report (Exhibit Ka-12) corresponds to the time mentioned in the F.I.R. as well as in the ocular testimony of PW-2 Mahesh Pal Singh and PW-3 Mahendra.

31. Now we have to scrutinize and analyse the alibi which has been taken by the accused-appellants. DW-1 Anopi is close relative of the accused-appellants. Sewa Ram is son of DW-1 Anopi who is married to the daughter of the accused-appellant Mewa Ram. DW-1 Anopi is resident of village Tatarpur which is 24 miles away from the village Himmatpur. It has been deposed by him that in the morning of Sunday Shyam Pal was informed that dacoits have murdered Jai Ram while committing dacoity at the house of accused-appellants Shyam Lal and Shyam Pal. However, no F.I.R. was lodged by the accused-appellants for this alleged incident of dacoity at their residence. DW-2 Babu Ram has deposed that in the alleged marriage, which was solemnized at the house of DW-2 Anopi, he had also participated.

32. These all are cooked up, baseless and false story. Moreover, the distance between

the village Himmatpur and Tatarpur is also not very much which may preclude the accused persons that after commission of the alleged offence they could not have reached at the village Tatarpur.

33. In the case of Ramesh Harijan Vs. State of Uttar Pradesh, (2012) 5 Supreme Court Cases 777 it has been held that :-

"C. Criminal Trial - Appreciation of Evidence -

Contradictions, inconsistencies, exaggerations or embellishments - Duty of courts - Reiterated - Held, it is duty of court to unravel the truth under all circumstances - Undue importance not to be given to minor discrepancies which do not shake basic version of prosecution case - Entire evidence must be evaluated by excluding exaggerated version as witnesses keep adding embellishments to their testimony - If a witness is otherwise trustworthy, then his evidence should not be disbelieved - If major portion is found to be deficient and residue is sufficient to establish guilt of accused, then courts must separate grain from chaff - It has to be appraised in each case as to what extent evidence is admissible - If courts consider some portion of evidence as insufficient or unworthy, it does not mean as a matter of law that entire evidence must be disregarded in all respects"

"E. Criminal Trial - Appreciation of Evidence - Credibility of witness - Maxim falsus in uno, falsus in omnibus - Inapplicability and effect of, if applied - Principles reiterated - Held, maxim falsus in uno, falsus in omnibus has no application in India and a witness cannot be branded as a liar - Falsity of witness or material particular at some portion would not ruin testimony from beginning to end - If that maxim is applied then in all the cases it is to be feared that administration of criminal justice would come to a dead stop"

"G. Criminal Trial - Proof - Proof beyond reasonable doubt - Meaning of, and duty of court while applying principle of reasonable doubt - Reiterated - Held, reasonable doubt is not an imaginary trivial or merely possible doubt - It is a fair doubt based upon reason and common sense - Doctrine of benefit of doubt particularly in every case must not nurture fanciful doubts or lingering suspicion, thus destroying social defence- Courts must give paramount importance to ensure that miscarriage of justice is avoided.

34. In the case of Kathi Bharat Vajsur and another Vs. State of Gujarat, AIR 2012 SC 2163, it was held by Hon,ble Supreme Court that when medical evidence was in consonance with principal part of oral/ocular evidence thereby supporting prosecution story. Then, there was no question of ruling out ocular evidence merely on ground that there were some inconsistencies or contradictions in oral evidence - When an eyewitness behaved in a manner that perhaps would be unusual, it was not for prosecution or Court to go into question as to why he reacted in such a manner - There was no fixed pattern of reaction of an eyewitness to a crime - When faced with what was termed as "an unusual reaction" of an eyewitness, Court must only examine whether prosecution story was in anyway affected by such reaction - If answer was in negative, then such reaction was irrelevant - Unusual behaviour of injured eyewitness, would not in anyway, aid Appellants to punch a hole on to prosecution story.

35. No other points have been raised before us by the learned counsel for the accused-appellants.

36. In the light of the above discussions, we find that this criminal appeal is liable to be dismissed on merits.

ORDER

(i) This criminal appeal is dismissed on merits.

(ii) The accused-appellants Mewa Ram, Shyam Pal and Shyam Lal are already in judicial custody.

Let the entire original record of this case be sent back forthwith to the Court of the learned Sessions Judge, Civil and Sessions Court, District Shahjahanpur for necessary compliance.