

Court No. - 43

Case :- JAIL APPEAL No. - 5046 of 2012

Appellant :- Parmeshwari @ Baba

Respondent :- State of U.P.

Counsel for Appellant :- From Jail, Brij Raj, Narendra Deo Shukla.A.C.

Counsel for Respondent :- A.G.A.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Deepak Verma,J.

1. Heard Shri Brij Raj, learned Amicus Curiae for the appellant and learned AGA for the State.
2. This criminal appeal is directed against the order of the Additional Sessions Judge, Court No. 3, Bareilly dated 03.02.2003 whereby the appellant has been sentenced to life imprisonment for an offence under section 302 IPC and has been awarded 6 months rigorous imprisonment for the offence under section 324 IPC.
3. A first information report was lodged on 02.10.2000 at Police Station Bhuta, District Bareilly which gave rise to Case Crime No. 244 of 2000, under Sections 302, 307 IPC.
4. The case as per the first information report was that the accused appellant, the cousin brother of the informant, came to the house of the informant on the date of incident at about 3:00 AM. The informants' mother objected to his coming at odd hours which led to an argument. At about 9:00 AM the appellant accused assaulted the mother of the informant with a 'banka' leading to her death on the spot. The informant, Omkar and Lala Ram tried to save the deceased and in the process the accused delivered a blow also to the informant. Thereafter the accused escaped due south.
5. After the first information report was lodged, the inquest was started the same day from 11:00 AM and was concluded at 1:00 PM. The witnesses of inquest opined that death was caused on account of the injuries suffered by the deceased. Post-mortem of the deceased was conducted the same day and was concluded at 5:15 PM
6. The accused was arrested the same day and on his pointing out, the

weapon of assault was recovered from the thatch of the deceaseds' hut. The injured, first informant, was medically examined at 1:30 pm at the District Hospital, Bareilly. Three injuries were found on his person. The first was an incised wound, 6 cm x 2 cm, bone deep on the left side, back of the chest, 4 cm from the lateral end of the right clavicle. Serum was found oozing from it. The 2nd injury was a contusion 4 cm x 3 cm all the lateral and upper part of the left leg. The 3rd injury was an abrasion .5 and 2.5 cm on the mid part of the left little finger. The doctor opined that injury No. 1 was caused by a sharp weapon, injury No. 2 was caused by a blunt object and injury No. 3 was caused by friction. The injuries were found to be fresh. Upon an x-ray of the left side of the chest no abnormality was found as per the supplementary report available on record. The injury was therefore found to be simple in nature.

7. After investigation chargesheet was filed against the appellant under section 302/307 IPC. After committal the trial court framed charges under sections 302/307 IPC on 18.04.2001.

8. As many as 9 witnesses were produced by the prosecution to prove the charges against the appellant. PW-1, Vishambhar Dayal is the first informant and the injured witness. PW-2, Omkar is also an eyewitness of the incident. PW-3, Poshaki Lal is scribe of the first information report. Dr K.S. Gupta, PW-4 conducted the post-mortem on the body of the deceased; Dr Rakesh Khandaury, PW-5, is the doctor who examined the injured Vishambhar Dayal. PW-6, Madan Lal is the witness to the recovery of the weapon of assault as also to the collection of plain and bloodstained earth from the site of occurrence. PW-7 Ram Krishna Yadav, is the first investigating officer while PW-8 is the Head Constable who has proved the chick FIR and the relevant GD entries. PW-9, KP Singh, Station Officer is the second investigating officer. The statement of the accused was recorded under section 313 Cr.P.C. On the basis of the evidence produced, the trial court convicted the appellant and has sentenced him as noted above.

9. PW-1, Vishambhar Dayal, the first informant deposed that his cousin Parmeshwari @ Baba visited his house off and on. About 10 months back he came to his house at about 3 AM which annoyed his mother, Nema Devi and she objected saying that he should not come at odd hours. Parmeshwari

got angry and fought with the informant's mother. At about 9 AM he came to armed with a 'banka' and started assaulting the informant's mother. The informant, Omkar and Lala Ram tried to save her. A blow was also given to the informant and he fell down. His mother died on the spot. He got tehreer transcribed by Poshaki Lal and thereafter went to police station Bhuta. He identified his signature on the report which was marked Ex. A-1.

10. During cross-examination he stated that he is not educated. His brother is educated. He was given only a single blow on his left shoulder. His house has 3 rooms all of which open due east. There is no verandah in front of the rooms. The appellant was armed even when he came at 3 AM. He has no explanation as to why this fact has not recorded in his statement. Due south is the house of his cousin Omkar. He is one of four brothers who reside in the same house. At the time of incident only his mother were present at home. His mother was assaulted near the pakad tree, 5 to 6 times with the weapon of assault. The house of Omkar is adjacent to his house. The tehreer was transcribed at home and the report was lodged at the police station. We went to the hospital from the police station and did not return home. When the tehreer was written in the village he was in the hospital and he put his thumb impression thereon, 2 or 3 days later. The body of the deceased was not sealed in his presence. He has denied the suggestion that he and his mother had been assaulted at night and that the accused had been implicated out of enmity. The scribe Poshaki Lal is the son of Kalicharan, the real uncle of the informant. He has denied the suggestion that every household in the village has a banka. When the accused came at 3 AM he had asked for money which made his mother angry. He is unaware as to whether the fact that money was demanded is recorded in the report. He is also not aware of the reason if the same is not recorded in his statement under section 161 Cr PC.

11. PW-2, Omkar has stated that he knew the accused from before the incident. He is a rogue and an immoral person. The accused had sold his land in the village and started residing in Shabaazpur. About a bigha of his land was left unsold. At about 9 AM, on the date of incident, the accused was asked by the deceased not to come to her house due to which he started

fighting with her. Bishambhar and Lala Ram were also present. The accused came with a Banka and started assaulting the deceased. The deceased was assaulted twice. Bishambher was also dealt a blow. The accused ran away along with the weapon of assault, due south. Nema Devi died on the spot. Bishambher got the report scribed by Poshaki Lal and went to the police station to lodge it.

12. During cross-examination he has stated that he did not accompany the first informant to the police station. On the date of incident he had seen the accused at 6 AM and then again at the time of incident. He was feeding his cattle at the time and saw the accused assault the deceased. He had seen the accused assault the deceased, twice. He was not assaulted as he was at a distance of 4 to 5 feet. He did not try to save the deceased out of fear. The accused had also assaulted Vishambhar. He approached the deceased only after the accused had run away. Poshaki Lal was not present at that time. Lala Ram is the real uncle of the informant Vishwanath while Poshaki Lal is the informant's cousin. He has denied the suggestion that he is deposing falsely as he is the cousin of the informant. His house is south of the house of the deceased. He was not present when the police came to the village at about 11 AM. His brother mother and children reside in one house. The house near the site of incident is used for tethering cattle. His brother, mother and children reside here during the day. He comes to this house only on account of the cattle. His residential house is situated at a distance of 40 yards from the house of the deceased. The house of Nema Devi is visible also from his residential house which is south from the house of the deceased. Nema Devi was assaulted in the courtyard outside her house 10 to 12 feet west of the pakar tree and she fell down there itself. Vishwanath has no wife or children. He has denied the suggestion that he has not seen the incident and is deposing falsely.

13. PW-3, Poshaki Lal is the scribe of the first information report and has identified his signature on Ex. A-1.

14. During cross-examination he has denied having gone to the police station with the informant. He is the cousin of the informant. He works as a home guard and after scribing the report he had left for his duty. He has denied the suggestion that the Tehri was scribed on the advice of police

personnel.

15. PW-4, Dr K.S. Gupta, had completed the post-mortem on the body of the deceased at 5:15 PM on 2.10.2000 . He reported the following injuries on the person of the deceased.

(i) incised wound 14 cm x 1.5 cm, x bone deep on the left side of the neck left of the lower lip till the neck 3 cm below the ear. The underlying jaw bone was cut.

(ii) incised wound 4 cm x 1 cm x bone deep on the left side just below the chin. The underlying jaw was cut.

(iii) incised wound 5 cm x 1.5 cm on the left side of the neck towards the back 5 cm below the left ear. The underlying tracheal rings were cut as were the blood vessels and oesophagus. This stomach contained hundred grams of semi-digested food. The post-mortem report prepared by him was marked as Ex. A-2. It was also stated that it was possible that the death had occurred at about 9:00 AM and that the three injuries were caused by a sharp weapon.

16. During cross-examination he has stated that looking at the injuries it is not possible to comment as to the size and dimension of the weapon of assault.

17. PW-5, Dr Rakesh Khandaury had examined that the informant, Vishambhar Dayal at 1:30 PM who had been brought by home guard Mohinder Pal. There were three injuries on the body of Vishambhar Dayal.

(i) Incised wound 6 cm x 2 cm x bone deep on the left side back of chest serum was oozing from this wound.

(ii) Contusion 4 cm x 3 cm wide on the upper part of the left leg.

(iii) Abrasion .5 cm x 5 cm of the little finger of the left hand towards the inside.

18. He opined that injury No. 1 was caused by a sharp weapon while injury No. 2 was caused by a blunt weapon and that injury No. 3 would be caused due to friction. All the wounds were fresh. X-ray had been advised as regards injury No. 1. The x-ray report was NAD and therefore injury No. 1 was a simple injury. He has proved injury report which was marked as Ex. A-3. The injuries could have been suffered at about 9:00 AM the same day. The supplementary injury report prepared by him on 24.10.2000 was

marked as Ex. A-4.

19. During cross-examination he has stated that injury No. 2 could have been caused by a fall.

20. PW-6. Madan Lal is the witness of recovery of the 'banka' as also to the collection of plain and bloodstained earth. He has stated that the bloodstained and plain earth was collected in his presence and a memo was prepared which was read out to him. Thereafter, he and Ashok Kumar put their signatures there on. He has proved Ex.A-5, the memo. He has also stated that the bloodstained 'banka' was recovered from the 'chhappar' of the deceased on the pointing out of Parmeshwari @ Baba. This weapon of assault was sealed in his presence and the recovery memo prepared, which was read out to them. He has proved this recovery memo, Ex. A-6. He has also identified material Ex. A-1, the weapon of assault, as also the boxes in which the plain and blood stained earth were sealed, which have been marked as material Exs.-2 and 3, respectively.

21. During cross examination, he has deposed that he was in his field at the time of incident. He returned at about 12:30 to 1:00 PM when the Sub Inspector was in the village. He met the sub-inspector near the body. The accused was not there. The documentation was started by the sub inspector at about 2 PM. He had not accompanied the body to Bareilly. The accused was arrested at about 5 PM and on his pointing out, the weapon of assault was recovered. He had come to know that the accused was hiding in the sugarcane field. He was not present at the time of his arrest. He saw the accused for the first time after he had been arrested. The accused was brought to the spot when the process of inquest etc. was going on. The body was lying near the Pakad tree. The Chapper is towards the front of the house, and is not located at a place where everybody is free come and go. He has denied the suggestion that he was not a witness to the recovery of the Banka or that he was deposing falsely on oath, being the cousin of the first informant, Vishambhar Dayal.

22. PW-7, Ram Krishna Yadav is the first investigating officer. The inquest was conducted on the spot after he had selected the witnesses, thereto. He has proved the inquest report Ex. A-7 and the other documents like Chalan Laash, photo Laash, letter to the CMO and RI as Exs. A-8 to A-

12. After the body was sealed, it was handed over to constables Ambrish Chandra and Bhaiya Lal for being taken for postmortem. He has proved the site plan, prepared by him, which was marked as Ex. A-13. He has also identified his signature on Ex. A-5, the memo of recovery of the plain and blood stained earth. He was informed that the accused is present in the village, and on the pointing out of an informer, the accused was arrested, and thereafter, questioned. The weapon of assault, the 'banka', was recovered at the pointing out of the accused from the thatch of the shed belonging to the deceased. This recovery was made in the presence of Madan Lal and Ashok Kumar. The items recovered were deposited in the police station and there after the investigation was taken over by S.O. K.P. Bhati. He has identified the 'banka' and the boxes in which the plain and field earth had been sealed. These items have been marked as material Ex. 1, 2 and 3 respectively. The dhoti, shirt, bangles and the nose pin of the deceased were identified by him and have been marked as material Ex. 4, 5, 6, 7 and 8, respectively.

23. During cross examination he has denied the suggestion that the thumb impression of the first informant was obtained on the Tehrir at the police station two or three days later. He has admitted that the time of recovery of weapon of assault is not mentioned in the memo, nor is the time of collection of the plain and blood stained earth mentioned in the corresponding memo. The place of recovery of the weapon of assault is also not mentioned. The accused had informed him that he could get weapon of assault recovered. It was duly recovered on his pointing out. Thereafter, the recovery memo was prepared. He has also stated that the body of the deceased was lying in an open area. The thatchment of the deceased existed in an open place accessible to all. He has denied the suggestion that the documentation done by him is fabricated or that no recovery was, in fact, made.

24. PW-8, Head Constable-Pyare Lal has proved the chick FIR and the corresponding GD entries. The original G.D. had been marked as A-15. He has admitted that the bundles containing the weapon of assault as also the plain and blood stained earth were deposited in the police station by ASI R.K. Yadav on the same day, and this was entered in the general diary as

Report No. 34 at 8:20 PM on 02.10.2000. The carbon copy of the GD was marked as Ex. A-16.

25. During cross examination he has denied the suggestion that the first information report was ante timed and that the documentation done is fabricated.

26. PW-9, K.P. Singh Bhati is the second Investigating Officer in the matter. At the time of incident, he was posted as station officer. He was not present at the police station when the first information report was lodged, and the preliminary investigation was conducted by S.I. R.K. Yadav. He took over the investigation on 03.10.2000. The items recovered were sent for forensic examination on 04.10.2000. He again recorded the statement of the accused on 08.10.2000; the statements of the eye witnesses Lalaram and Omkar, as also the witnesses of the inquest, namely Shiyaram, Radhey Shyam, Satyapal, Nanki Prasad, Sunder Lal and the scribe of the FIR. He has prepared the site plan of the place from where the weapon of assault was recovered, which has been marked as Ex. A-17. The X-ray report of the informant was obtained on 01.11.2000 and according to it the injury suffered by him was a simple injury. He filed the charge sheet against the accused on 1.11.2000 under Section 302/307 IPC. The charge sheet prepared by him was marked as Ex. A-8. The thatch, where the weapon of assault was recovered does not have a door and was open. There is open space between the Pakad tree and the thatchment which is situated at a place accessible to all.

27. The statement of the accused has been recorded under section 313 Cr.P.C. He has denied the incriminating circumstances pointed out against him. Question No. 11 put to the accused and his answer thereto during his statement under section 313 Cr.P.C. is quoted below:-

"प्रश्न नं० 11 : सबूत पक्ष की साक्ष्य में आया है कि विवेचक ने आपको गिरफ्तार किया। आपने अपनी निशानदेही पर श्रीमती नेमा देवी की हत्या में प्रयुक्त किया गया वंका वस्तु प्रदर्श-1 बरामद कराया जिसकी फर्द प्रदर्श क-6 तैयार की गई। इस सम्बन्ध में आपको क्या कहना है?

उत्तर- गलत है मेरे पास से कुछ बरामद नहीं हुआ। मुझे घर से पकड़ा था।

28. It is therefore evident that the accused claims to have been arrested from his house and that nothing was recovered from him. He has been falsely implicated on account of enmity. He has been falsely implicated, so

as to occupy his land situated in the village.

29. The contention of counsel appearing for the appellant that it is a case of false implication. The evidence against appellant is not conclusive, and it cannot be said that the charges have been improved beyond shadow of doubt. There are enough contradictions in the statement of the witness to render the prosecution case extremely, doubtful. In this regard learned counsel for the appellant has referred to the statement of the PW-1, Vishambhar Dayal, wherein he has admitted that he had put his thumb impression on the Tehrir two or three days after the incident and in the police station.

30. The next contention is that the alleged recovery of the weapon of assault is also extremely doubtful as this recovery has been made from a spot which was accessible to all and sundry. Therefore, there are very bright chances of the weapon of assault having been planted. It has, lastly been reiterated that the appellant has been falsely implicated so that his collaterals, the informant and his family member could occupy his land situated in the village.

31. Learned AGA has submitted that the contradictions, if any, are minor contradictions, which will not in any manner detract from the evidence or the prosecution case. The contradictions in the statement of the PW 1 are also not significant, because admittedly, he is an uneducated person, a fact stated by him in his examination. Under the circumstances, his statement that he put his thumb impression on the Tehrir two or three days after the incident and at the police station cannot be accepted. The same appears to be a product of some confusion. In any case, the investigating officer has clearly denied the suggestion in his cross examination. Beside, the informant is a injured witness and therefore his presence at the time of occurrence cannot be doubted.

32. He has lastly submitted that in his statement under Section 313 Cr.P.C., and despite a specific question having been put to him, the accused has failed to deny the factum that the weapon of assault had been recovered on his pointing out. His statement that he had was arrested from his house, and nothing was recovered from him cannot

be read to mean that no recovery was made at his pointing out.

33. Under the circumstances, therefore the charges against the appellant stands proved to the hilt. His conviction and sentence call for no interference.

34. We have considered the submissions made by learned counsel for the parties and perused the record.

35. There is merit in the submission of learning counsel for the state that a statement of the informant PW-1, Vishambhar that he had put his thumb impression on the Tehrir three days after the incident in the police station is contrary to what has been stated by him in his examination in chief. It is also contrary to the statements of PW 2 Omkar, the other eye witness of the incident as also PW-3, Poshaki Lal. Both these witnesses have categorically stated that the Tehrir was scribed by Poshaki Lal and thereafter the informant put his thumb impression there on, and carried out to the police station for getting the first information report lodged. Even the Investigating Officer, PW7 Ram Krishna Yadav in his cross examination has clearly and categorically denied the suggestion that the thumb impression of the informant was appended on the Tehrir two or three days later, at the police station. There is also nothing on record to indicate that the PW-1, Vishambhar is an educated person is, contrary to what he has stated in his cross examination in chief.

36. Under the circumstances his statement that he has put his thumb impression to the Tehrir, two or three days later cannot be said to be clinching and is in any case, against the weight of the evidence on record.

37. The other submissions made on behalf of the appellant that the weapon of assault has been recovered from a place accessible to all is no doubt a circumstances in favor of the appeallant. However, the appellant in his statement under section 313 CRPC, as pointed out by learned AGA has not denied the recovery of weapon of assault at his pointing out. This argument of learned counsel for the appellant, therefore, is of no consequence. Moreover the injury on the person of the informant, though found to the simple in nature is consistent with

the prosecution version that the deceased was assaulted by a sharp edged weapon. This injury has been examined the same day at about 1:30 PM, the injured Vishambhar Dayal having been taken for medical examination by a police personnel. The appellant accused was arrested the same day. The defence has not led any evidence or raised any arguments which would even remotely explain this injury. It is no doubt true that the deceased had tried to plead that the incident took place at around 3.00 AM in the night and the persons who had assaulted the deceased as also the informant, could not be identified in the dark, but the same cannot be accepted, especially once the weapon of assault is proved to have been recovered at the instance and on the pointing out of the accused appellant.

38. Under the circumstances, it can also not be accepted that appellant has been falsely implicated. There is enough evidence to connect him to the incident, and the prosecution case in our considered opinion stands proved beyond reasonable doubt. The judgment of conviction, and the sentence awarded to the appellant, therefore, is not liable to be interfered with. The jail appeal is accordingly, dismissed.

39. Let the copy this judgment be sent to the lower court as to the jail where the appellant is at present lodged.

40. Shri Brij Raj, learned Amicus Curiae be paid a sum of Rs. 6,500/- for the assistance rendered by him to the Court.

Order Date :- 20.11.2023

Mayank