

High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No. - 2023:AHC-LKO:85023-DB

Reserved on: 29.11.2023

Delivered on: 22.12.2023

Reserved

Case :- CRIMINAL APPEAL No. - 77 of 1997

Appellant :- Lalla Singh And Others

Respondent :- State of U.P.

Counsel for Appellant :- I.Murtaza,Suresh Singh

Counsel for Respondent :- Govt. Advocate,Satendra Singh Rana

Hon'ble Rajan Roy,J.

Hon'ble Mrs. Jyotsna Sharma,J.

(Per: Rajan Roy, J.)

1) Heard Sri Suresh Singh, learned counsel for the appellants and Sri Arunendra, learned A.G.A. for the State.

2) This is an appeal under Section 374 (ii) of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 01.02.21997 passed by Special Sessions Judge, Sitapur in Session Trial No.538/1992 arising out of Case Crime No.41/1992 registered at Police Station-Reosa, District-Sitapur whereby all the appellants have been convicted under Section-302/34 I.P.C. and sentenced to undergo rigorous imprisonment for life and fine of Rs.5000/- each and in default thereof, rigorous imprisonment of one year.

3) The appeal has been filed by four appellants, out of which, appellant no.4- Badlu Singh has died. The appeal has already been dismissed as abated so far as it related to him. We have heard the appeal of appellant nos.1 to 3.

4) Lalla Singh-appellant no.1 is the elder brother of the deceased-Kallu Singh and, the other appellants namely, Anil Singh and Bhawani Singh are nephews of Kallu Singh and son of appellant no.1.

5) The prosecution case in nutshell is that on 13.05.1992 at about 06:00 P.M., the appellants armed with hoe (Kudaal) and lathis reached the agricultural field measuring about four bighas regarding which there was a dispute between them and Kallu Singh. Anil Singh-appellant no.2 started digging the disputed land with the Kudaal. An objection was raised by Kallu Singh whereupon Bhawani Singh-appellant no.3 snatched the Kudaal from Anil Singh and struck a blow on the head of Kallu Singh. Other appellants struck blows upon him with lathis. On an alarm being raised by Kallu Singh, the informant P.W.1-Nirmala (wife of the deceased) and other villagers, namely, Kaushalendra Singh (P.W.2), Hargovind Singh (P.W.3) etc reached the scene. The assailants ran away leaving Kallu Singh injured and lying on the field.

6) After investigation, chargesheet was filed against the appellants and the sessions court charged the appellants, namely, Lalla Singh, Anil Singh, Bhawani Singh and Badlu Singh with the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. On the same date, the fifth accused, namely, Raghunandan Singh was charged with the

offence punishable under Section 302, 109 I.P.C. After trial, Raghunandan Singh was acquitted of the offence with which he was charged whereas the appellants herein have been convicted of the offence under Section 302 read with Section 34 I.P.C. and sentenced as mentioned earlier.

7) The contention of learned counsel for the appellants is that it is a case of false implication. Out of the three eye-witnesses examined by the prosecution, two i.e. P.W.2 and P.W.3 have turned hostile and the only other eye-witness i.e. P.W.1 is the informant and wife of the deceased, therefore, not only a related but also an interested witness in view of the prior enmity between the parties. The body of deceased itself was removed from the scene of crime prior to the police reaching the same. P.W.1 has herself stated in her cross-examination that she had an aged mother-in-law and two children at home and nobody else, therefore, it is highly unlikely that she would leave them alone and be present at the scene of crime. In fact, she has herself said that she had not gone with her husband and was not present at the place where the husband was present with the cattle. She has also mentioned the distance of her agricultural field where the incident occurred as half a mile from her house which also makes her presence at the time of commission of crime highly unlikely. It appears that she reached the scene subsequently and merely on account of prior enmity the appellants were falsely implicated. The delay of six hours and forty five minutes in lodging the F.I.R. was sufficient to deliberate and consult and thereafter, lodge the F.I.R. falsely implicating the

appellants. In their defence, the appellants have taken the plea that it was a case of false implication on account of prior enmity.

8) Learned A.G.A. has submitted that injuries on the body of the deceased corroborate the testimony of P.W.1 as the incise wound could have been caused by a Kudaal (hoe). Learned counsel for the appellant on the other hand has submitted that Kudaal is not such a sharp weapon that incise wound would be caused, though, he could not deny the fact that some of the appellants are alleged to have been carrying lathis. Learned A.G.A. further submitted that there is no reason to disbelieve the testimony of P.W.1 i.e. wife of the deceased merely because she was a related witness. Prior enmity was the motive for the appellants to commit the crime. Presence of P.W.1 at the scene of crime is quite natural.

9) The prosecution case is based on eye-witness account of P.W.1-Nirmala wife of the deceased, P.W.2-Kaushalendra Singh and P.W.3-Hargovind Singh. Kaushalendra Singh is related to the deceased and P.W.1. He and P.W.3 have not supported the prosecution case, although, P.W.2 has testified about having written the tehrir on the dictation of P.W.1 and has also proved Exhibit No.1 as the tehrir which was written by him. This leaves us with the testimony of P.W.1 i.e. wife of the deceased.

10) P.W.1 has mentioned about a land dispute between the parties. In her examination-in-chief, she has supported the prosecution case. However, in cross-examination, she has stated that her husband had taken the cattle for grazing at about

06:00 P.M. on the fateful day. She was at her house. She has stated that her house is situated about half a mile from her agricultural field that is the field where the incident took place. He has also stated that in her home, she has an aged mother-in-law and two daughters, nobody else. She has stated that she was not present at the place where the husband had taken the cattle for grazing. Although, she has also stated thereafter that her husband was killed in front of her. She has then stated "जहाँ पर मैं पहुँची व चकरोड था। मेरा आदमी खेत में मारा गया।" The point is if she was already there then there is no explanation as to why she has said "जहाँ पर मैं पहुँची व चकरोड था।" She has thereafter stated that after her husband died, Kaushalendra and Chaudhary brought the deceased. The presence of P.W.1 at the time of commission of the crime as claimed does not inspire confidence from her testimony.

11) P.W.2 and P.W.3, as already stated, have not supported the prosecution case and were declared hostile. Nothing could be brought about by the prosecution in their cross-examination which could support the prosecution case.

12) Moreover, the incident is said to have taken place on 13.05.1992 at about 06:00 P.M. whereas the F.I.R. has been lodged in the night intervening 13/14.05.1995 at about 12:40 A.M. It has been lodged with a delay of about 06 hours and 45 minutes. There was a prior enmity between the deceased and the accused who are closely related by blood. Enmity can cut both ways. It can be a motive for murder as also for false implication. The case of the prosecution was based on direct

evidence. However, as already stated P.W.2 and P.W.3 have not supported the prosecution case and the presence of P.W.1 at the time of commission of crime has been found to be doubtful by us. The delay in lodging the F.I.R. left scope for deliberations and consultation before its lodging as also false implication on account of prior enmity and suspicion in this regard. In her cross-examination, P.W.1 has stated that she had taken body of the deceased on a bullock cart to the police station which was also two miles away and the F.I.R. was lodged an hour after reaching the police station. Even this does not explain the delay of six hours and forty five minutes. Moreover, as already stated, it is not safe to convict the appellants merely on the basis of her testimony as her testimony regarding her presence at the time of commission of the crime does not inspire confidence in us.

13) The scene of crime was obviously disturbed as the body was not lying at the scene of crime but had been removed from there and taken to the village and thereafter to the police station. In her cross-examination, P.W.1 has stated that when her husband fell down, P.W.2 and Chaudhary had brought his body whereas in her examination-in-chief she has stated that on an alarm being raised by her husband, P.W.3 and P.W.2 reached the scene whereupon the accused ran away, thereafter, she somehow arranged for the bullock cart and took the body of her husband to police station. There is contradiction in this regard also.

14) Coupled with the aforesaid facts, there is no recovery of the weapon allegedly used in commission of crime either from

the appellants or on their pointing. This may not have been relevant if ocular evidence was reliable and had supported the prosecution case but it is not so.

15) From the medical evidence, there is no doubt that the deceased was done to death but the prosecution has failed to prove the guilty of the appellants punishable under Section 302 read with 34 I.P.C. beyond reasonable doubt.

16) The trial court has failed to appreciate the evidence on record appropriately especially the testimony of P.W.1 in view of our discussion made hereinabove.

17) In view of the above discussion, the appeal is **allowed**. We set aside the judgment of trial court. All the surviving appellants are on bail. Bail bonds submitted earlier are cancelled and sureties are discharged. The appellants are directed to file personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A of the Code of Criminal Procedure within six weeks.

18) The original records shall be remitted back to the trial court for necessary action, as per law.

(Mrs. Jyotsna Sharma,J.) (Rajan Roy,J.)

Order Date :- 22.12.2023

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