

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2023:AHC-LKO:82521-DB

Judgment Reserved on 03.10.2023

Judgment Delivered on 15.12.2023

Court No. - 9

Case :- JAIL APPEAL No. - 565 of 1990

Appellant :- Kishan

Respondent :- The State Of U.P.

Counsel for Appellant :- A B Misra, Aakash

Srivastava, Alok Kumar Srivastava, Anuj Pratap Singh, Raj
Kumar

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Ajai Kumar Srivastava-I, J.)

1. Heard Sri Aakash Srivastava, learned counsel for the appellant, learned A.G.A. for the State and perused the entire record.

2. Under challenge in this jail appeal is the impugned judgment and order dated 10.08.1990 passed by the learned Special and Additional District & Sessions Judge, Hardoi in Sessions Trial No 196 of 1989 titled as State vs. Bindra & Another arising out of Crime No 146 of 1988, under Sections 302/34, 323 & 452 of the Indian Penal Code¹, Police Station Sandila, District Hardoi

¹ hereinafter referred to as "I.P.C."

whereby the appellant, Kishan has been convicted and sentenced to undergo life imprisonment for the offence under Section 302/34 I.P.C. He has further been convicted and sentenced to undergo six months' rigorous imprisonment for the offence under Section 323 I.P.C. He has also been convicted and sentenced to undergo one year's rigorous imprisonment for the offence under Section 452 I.P.C. All the sentences were directed to run concurrently.

3. The case of the prosecution, in nutshell, is that the brother of the first informant, Laltu was married to the sister of the appellant, Kishan. The elder sister of the appellant was married to co-convict, Bindra's elder brother, Chiranjy. The co-convict, Bindra had illicit relations with the Laltu's wife, about which the first informant came to know after the marriage of his brother. The co-convict, Bindra wanted to keep the wife of brother of first informant as his wife. The appellant and his mother also wished so. Wife of deceased Laltu had come to the first informant's house 3-4 times after marriage. The appellant and co-convict, Bindra used to call her back on some false pretext.

4. It is said that when the first informant came to know about the illicit relationship of the co-convict, Bindra and wife of deceased Laltu, he refused to send her to appellant's home. Due to aforesaid reasons, the co-convict, Bindra threatened the deceased, Laltu and the first informant, Kamta. After about 15 days, the deceased, Laltu's mother-in-law and younger brother-in-

law came to the first informant's house and took Laltu's wife on the occasion of festival, Danna Gudiya and they stated that she would return on Raksha-Bandhan. After the festival of Raksha-Bandhan was over, the first informant and Laltu went to bring the Laltu's wife. Laltu's mother-in-law said that Laltu's wife has not yet come back from her sister's place which is situated in village Bijauli. Laltu's mother-in-law assured that as soon as Laltu's wife returns back from her sister's place, she would be sent back. While the first informant and Laltu were returning to their home, villagers warned them that if they did not take Laltu's wife back, Laltu's mother-in-law will get her married to the co-convict, Bindra.

5. On 15.10.1988 at about 2:00 A.M, the first informant and his brother, namely, Laltu as well as Shriram and Rampal were sleeping on the floor in courtyard inside his house. While they were asleep, the appellant, Kishan descended in the courtyard. The younger brother of the first informant, Laltu woke up and reached in the courtyard where he was shot by co-convict, Bindra by his countrymade firearm. After being shot, Laltu fell down on the ground. Rampal tried to catch hold of the appellant, Kishan, who hit him with a stick and injured him. When the first informant, Rampal & Shriram tried to catch hold of the appellant, Kishan and co-convict, Bindra, the co-convict, Bindra fired one more shot and ran away towards north. They saw and identified the appellant, Kishan and the co-convict, Bindra in the light of electric bulb.

6. The inquest proceeding started on 15.10.1988 at 3:30 A.M. and got concluded on 15.10.1988 at 8:15 A.M. The inquest report has been duly proved by P.W.-4, Sadashiv Mishra as Ext. Ka-3.

7. On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, Kamta, the first information report, Ext. Ka- 14 came to be lodged against the appellant on 15.10.1988 under Section 302/34 I.P.C.

8. According to the Post-mortem report, Ex. Ka-2 which has been proved by P.W.-3, Dr. S Thiryani, the cause of death of the deceased is reported to be shock and haemorrhage as a result of ante-mortem injuries. One firearm wound of entry was reported on the body of deceased.

9. The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C. He visited the place of occurrence and prepared a site plan thereof Ext. Ka- 10.

10. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ex. Ka-11 against the accused, namely, Bindra and Kishan.

11. Charge for the offence under Section 302/34 I.P.C. was framed against the present appellant, who denied the charge and claimed to be tried.

12. In order to bring home guilt of the appellant, the prosecution has examined Kamta, complainant as PW-1, Rampal as PW-2, Dr. S. Thiryani as PW-3, Sadashiv Mishra as PW-4, Teekaram Malik as PW-5, Dr. Sarvesh Saxena as P.W.-6, Constable Ravindra Kumar as P.W.-7 and Head Constable, Sohan Singh as PW-8.

13. The appellant, in his statement recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He has also stated to have been falsely implicated in this case and he claimed to be innocent. He stated that in fact dacoity had taken place in the house of the deceased wherein the appellant has been falsely implicated due to enmity.

14. P.W.-3, Dr. S. Thiryani conducted the post-mortem on the body of the deceased, Laltu. According to post-mortem report, the cause of death of deceased is reported to be shock and haemorrhage as a result of ante-mortem injuries.

15. No evidence in defence was adduced by the accused/ appellant before the learned trial court.

16. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 10.08.1990 whereby the appellant came to be convicted as aforesaid.

17. Aggrieved by the aforesaid impugned judgment and order dated 10.08.1990, the appellant has preferred the instant criminal appeal.

18. Learned counsel for the appellant has submitted that the appellant is innocent, who has been falsely implicated in this case. The finding of guilt of the appellant recorded by the learned trial court is against the weight of evidence which has been recorded on the basis of surmises and conjectures, therefore, the same cannot be sustained.

19. His further submission is that the prosecution story is unbelievable and the appellant has been falsely implicated on the basis of false and fabricated facts. The prosecution witnesses failed to prove the prosecution case. P.W.-1, Kamta and P.W.-2, Rampal have falsely deposed against the accused/ appellant. The statements of witnesses of fact have not been considered in their right perspective and, therefore, the appellant wrongly came to be convicted by the impugned judgment and order dated 10.08.1990, which is not based on due analysis of evidence available before the learned trial court. He has also submitted that unduly harsh sentence has been awarded to the appellant.

20. Learned counsel for the appellant has, thus, prayed to set aside the impugned judgment and order dated 10.08.1990 and to acquit the appellant accordingly.

21. Per contra, learned A.G.A. for the State has submitted that the accused/ appellant rightly came to be convicted vide impugned judgment and order dated 10.08.1990, which is well discussed and reasoned. The

appellant was named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimony of prosecution witnesses. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeal.

22. Having heard the learned counsel for the appellant, learned A.G.A. for the State and upon perusal of record including the testimonies of prosecution witnesses examined by the prosecution, we find that the first informant is Kamta, who has been examined as P.W.-1. He has proved the written report, Ext. Ka-1. He is an eye-witness, who has stated to have seen this crime being committed by the appellant along with co-convict, Bindra. We have been able to notice that motive for committing this crime as unfolded by the prosecution is that the sister of the appellant was married to younger brother of the first informant, deceased, Laltu about one year prior to this incident. According to prosecution story, co-convict, Bindra had illicit relation with the wife of deceased, Laltu, therefore, co-convict, Bindra and the appellant, Kishan always wanted to take the wife of deceased, Laltu back to her parent's home.

23. According to P.W.-1, Kamta, the first informant, there existed an electric pole on north-west corner of his house and there was a bulb affixed on it which kept the adjoining road and house of the first informant well lit during the night. The same was lit on the date of incident at about 2:00 A.M. According to P.W.-1, Kamta, the

appellant along with co-convict, Bindra climbed on the roof of his house from southern direction and they came to his courtyard whereupon after hearing the chirm, the first informant and his brother, deceased, Laltu as well as Shriram and Rampal woke up.

24. We may make it clear here that according to prosecution story, on the date of incident, besides first informant and his brother, deceased Laltu, Shriram and Rampal were also sleeping in the house of first informant. As soon as deceased, Laltu reached in the courtyard, he was shot by co-convict, Bindra, who was carrying a countrymade firearm. The younger brother of the first informant, Rampal tried to catch hold of the co-convict, Bindra, who was then hit by the appellant by a danda. Thereafter, the appellant and co-convict, Bindra opened the main door and fled away from the scene of occurrence. The first informant and other witnesses, who were present at the spot, tried to chase the assailants, however, they did not succeed.

25. P.W.-2, Rampal is an eye-witness, who is also an injured witness. His injuries were examined by Dr. Sarvesh Saxena, which has been proved as Ext. Ka-12. The injury report, Ext. Ka-12 reveals that a fresh lacerated wound of 1 cm x 0.3 cm x muscle deep, 5 cm from the right eyebrow was found on his body. This witness has stated that the deceased, Laltu was shot dead by co-convict, Bindra by a countrymade firearm. This witness, P.W.-2, Rampal has supported the

prosecution case as contained in written report, Ext. Ka-1 and has stated to have seen the incident.

26. We have been able to notice that in order to prove its case, the prosecution has examined two witnesses of fact i.e. P.W.-1, Kamta and P.W.-2, Rampal. Both of them are brothers of deceased, Laltu and thus, they are related witnesses. However, after carefully examining their testimonies, we find their presence at the place of occurrence to be very natural. Their testimonies in respect of incident and source of light i.e. electric bulb being lit on the electric pole is consistent. The fact of availability of source of light stands corroborated by the testimony of P.W.-5, Investigating Officer, who has stated on oath that in order to ascertain the source of light on the date of incident, he had written an application to Junior Engineer, Hydel Sandila on 30.11.1988 and in response thereto, he was informed by the Hydel Department that on the date of incident, there was uninterrupted electric supply in the concerned area.

27. Hon'ble Supreme Court in the case of **Dahari and others vs. State of U.P.** reported in **AIR 2013 SC 308** has held that the testimony of a witness in a criminal trial cannot be discarded merely because the witness is a relative or a family member of the victim of the offence. In such a case, court has to adopt a careful approach in analyzing the evidence of such witness and if the testimony of the related witness is otherwise found credible, accused can be convicted on the basis of testimony of such related witness.

28. A three Judges Bench of Hon'ble Supreme Court in **Maqsoodan and others vs. State of U.P.** reported in **(1983) 1 SCC 218** has also held that presence of injured witnesses at the time and place of occurrence cannot be doubted as they had received injuries during the course of the incident and they should normally be not disbelieved.

29. The injury report of P.W.-2, Rampal reveals that a fresh lacerated wound 1 cm x 0.3 cm x muscle deep, 5 cm from the right eye brow was found on his forehead. This injury report has been proved by P.W.-6, Dr. Sarvesh Saxena.

30. Therefore, having regard to the fact that though P.W.-1, Kamta and P.W.-2, Rampal are brothers of deceased, Laltu, their presence at the place of occurrence on the date of incident being natural, their testimonies appear to us to be consistent and reliable. Minor contradictions in respect of the fact as to whether they were sleeping on cots or they were lying on ground in the courtyard has rightly been found by learned trial Court to be such trivial discrepancy which does not affect veracity of prosecution case which has otherwise been duly proved by the prosecution. We do not find it to be a case of false implication of the accused/ appellant.

31. Having scrutinized the prosecution evidence available on record carefully, we do not find any infirmity in the finding of learned trial Court whereby the appellant has been held to be guilty of offence under Section 302

read with Section 34 I.P.C. and has been sentenced to undergo life imprisonment as the appellant not only participated in this incident, rather he actively participated and inflicted lathi blow to the P.W.-2, Rampal on the date of incident which shows that he was sharing the common intention of co-convict, Bindra to kill the deceased, Laltu on the date of incident.

32. For all aforesaid reasons, we do not find any merit in the instant appeal, which deserves to be dismissed and is, accordingly, **dismissed.** `

33. The appellant is on bail. His bail bonds are cancelled. Sureties are discharged. The appellant is directed to surrender before the concerned court to serve out the remaining sentence within eight weeks from today, failing which, learned trial Court concerned shall issue warrant for his arrest for serving out the sentence.

34. Let the lower Court record along with a copy of this judgment be transmitted forthwith to the learned trial Court for information and necessary compliance.

(Ajai Kumar Srivastava-I, J.) (Rajan Roy, J.)

Order Date :- 15.12.2023
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