

High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No. -2023:AHC-LKO:81348-DB

Reserved on: 26.10.2023

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Reserved

Case :- CRIMINAL APPEAL No. - 494 of 1986

Appellant :- Gore Singh And 9 Others

Respondent :- State of U.P.

Counsel for Appellant :- B.M. Sahai

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per: Rajan Roy, J.)

1. Heard Sri B.M. Sahai, learned counsel for the appellant nos.3, 6, 8 & 10 and Sri Umesh Chandra Verma, learned A.G.A. for the State.

2. This is an appeal under Section 374 Cr.P.C. against the judgment and order dated 26.07.1986 passed by Special Judge, Unnao in Session Trial No.261/1984 lodged at P.S.-Asiwan, District-Unnao sentencing each of the appellants to undergo life imprisonment under Section 302 read with Section 149 I.P.C. and two years' rigorous imprisonment under Section 148 I.P.C.

3. Out of the ten appellants who had filed this appeal only appellant nos.3, 6, 8 & 10 are alive. The appeal with regard to others has already been dismissed as abated.

4. It is a case of double murder.

5. The case of prosecution in nutshell is that there was a prior enmity between the accused and the deceased. Some of the accused had fired upon him earlier which led to a criminal case. He was a witness in another murder case involving some of the accused. A year ago, these persons had falsely implicated the deceased and Informant in a case in which they had been acquitted by the Sessions Court. A couple of months ago, deceased was attacked with bombs etc which led to another criminal case between the parties. As regards the case at hand, the informant's side had purchased some land in village-Mirzapur, P.S.-Asiwan. The boundaries of the said land were being marked and repaired. On 31.12.1983 at about 09:00 A.M., the Informant along with the deceased-Gauri Shankar, brother-Sundar Lal and one Hari Pal Yadav had also gone for the said purpose. Sundar Lal was carrying his revolver. Mahabali Yadav, Puttilal Yadav and Raghuraj Yadav were also repairing the boundaries (Medh) on his fields. As soon as they reached their newly purchased land, the accused came out of the sugarcane fields situated towards north-west of the informant's agricultural field. Some of the accused were armed with rifle, guns while others with Kulhari etc. Gore Singh and Nawab Singh exhorted the other accused to kill Gauri Shankar and Sundarlal. All the accused fired with rifles and guns upon them with common intent to kill. Informant's father and

brother were slightly ahead of him. They ran towards the 'Purab Tal'. Sundarlal fired from his revolver in defence. The informant and Haripal ran towards the south. The accused surrounded his father and brother towards the east near the mango tree and killed them by firing from their firearms. Gore Singh-the accused took away the revolver of his brother. Gore Singh, Baram Singh and Ramu Singh were carrying rifles and rest were carrying guns from which they fired. The accused-Hemraj was carrying a 'Kulhari'. When the informant's side raised an alarm other villagers including Nanha Singh came. The accused ran away towards the north.

6. F.I.R. was lodged on 31.12.1983 itself at 12:30 P.M. The lodging of the F.I.R. is reasonably prompt considering the distance of the police station which was eight miles from the scene of crime.

7. Post-mortem report of Sunder Lal is Ex.Ka.1. He had twenty injuries on his body most of which were firearm injuries. He also had a lacerated wound on the back of his head i.e. injury no.20. It has come in the testimony of eye-witness i.e. P.W.1-Dr. V.N. Mathur that this injury was caused by kulhari. The cause of death of Sunder Lal is mentioned as shock and hemorrhage as a result of ante-mortem injuries. P.W.1 has proved this post-mortem report.

8. The post-mortem report of Gauri Shankar is Ex.Ka.2. He had nine injuries most of which were firearm injuries. He also had one abrasion. All the injuries on Gauri Shankar were caused by firearms. Bullets and pellets were also recovered

from his body. Dr. Guru Bux Lal-P.W.2 is the doctor who conducted the autopsy on the body of Gauri Shankar. He has proved his post mortem report.

9. From the post-mortem reports and testimony of P.W.1 and P.W.2, it is proved beyond doubt that the deceased were murdered.

10. Inquest reports are Ex.Ka.8 and Ex.Ka.9. Siteplan is Ex.Ka.15.

11. The clothes and other items of the deceased lying on the scene of crime have been recovered. A led cartridge has been recovered from the side of Sunder Lal. Likewise, a led cartridge fired from a rifle has been recovered from a tree near the scene of crime. Two 12 bore L.G. pellets of Gauri Shankar have been recovered on the chest. Three empty cartridges of rifle 0315 bore one of which was stained with blood have been recovered from the scene lying on the left side of the body of deceased-Gauri Shankar. Bullets and pellets were also recovered from the body of Gauri Shankar, as already mentioned above.

12. However, there is no recovery of the weapon allegedly used to commit the crime nor is there any forensic report regarding examination of bullets and pellets etc.

13. The case of prosecution is based on direct evidence of P.W.3 and P.W.5 apart from medical evidence already discussed hereinabove.

14. The case of the appellants is one of denial as is evident from their statements under Section 313 Cr.P.C.

15. After investigation, the police submitted chargesheet against the accused all of whom were tried and convicted by the trial court under Section 302 read with Section 149 and Section 148 I.P.C. and were sentenced to imprisonment as already mentioned earlier.

16. The contention of appellants' counsel was that as per the testimony of P.W.1 and P.W.2, there was faecal matter in the large intestine and possible time of death could vary eight hours on both sides. This, according to him, was indicative of the fact that the incident did not occur at 09:00 A.M. on 31.12.1983. The death of the deceased occurred sometimes in the night and a false story was cooked-up to implicate the appellants who had a prior enmity with the informant's side. As regards testimony of P.W.5, it was contended that P.W.5's statement was recorded before the police one and a half months after the incident which gave scope for deliberations, consultations and false implication of the appellants, therefore, his testimony should be discarded by this Court straightaway as unreliable. As regards P.W.3, learned counsel invited our attention to the contents of the F.I.R. wherein no details had been mentioned as to which weapon was used by each of the accused and only general allegations were levelled, whereas, in his testimony before the Court, he has assigned specific role of firing with specific weapons to different persons and also of having used kulhari, this according to him, was an improvement thereby making his testimony unreliable. Moreover, it was also his contention that P.W.3 is son of the deceased, therefore, a related and interested witness. Based on

the aforesaid submissions, it was contended that the trial court has erred in convicting the appellants. The judgment is based on conjectures, surmises and presumptions which was liable to be set aside and the appeal is liable to be allowed. He did not advance any other argument.

17. Sri Umesh Verma, learned A.G.A. opposed the appeal. He submitted that testimony of P.W.3 is wholly reliable and has been corroborated from the contents of the F.I.R. and medical evidence on the record. In cross-examination, appellants have not been able to point out any such inconsistency/contradiction so as to make his testimony unreliable. His credibility has remained unimpeached. His testimony itself is sufficient to prove guilt of the appellants beyond reasonable doubt, the motive of course being prior enmity. As regards P.W.5, he submitted that though his statement was recorded by the police about one and a half months after the incident, it corroborates the testimony of P.W.3 and the prosecution case to the extent he has stated that he saw the accused running away and therefore, this part is reliable. As regards contention of appellants' counsel regarding faecal matter having been found in large intestine of the two deceased, he submitted that this was not a factor which can outweigh other irrefutable evidence on record and this cannot be made the basis for acquitting the appellants. Presence of faecal matter in large intestine could be for various reasons such as constipation etc and law is now very well settled that this fact by itself cannot be made the basis for disbelieving the prosecution case. Motive is clearly proved which is prior enmity. There is sufficient

evidence to hold the appellants guilty as has been done by the trial court, rightly so.

18. We have heard learned counsel for the parties and perused the records.

19. P.W.1 and P.W.2 are the doctors who have proved the post-mortem reports i.e. Ex.Ka1 and 2. As already mentioned, injuries on the body of the deceased clearly prove that they have been murdered. P.W.1- the doctor of post-mortem report (Ex.Ka.1) has not only proved the post-mortem report but has also stated that death of Sunder Lal had been caused due to shock and hemorrhage resulting from injuries. These injuries were sufficient to cause immediate death. Injury nos.1 to 3 could be caused by kulhari (axe). P.W.3-the eye-witness has clearly mentioned in the F.I.R. as also in his testimony before the court that the accused-Hemraj was carrying a kulhari and he had struck Sunder Lal with kulhari, therefore, medical evidence corroborates his testimony. P.W.1 has stated that injury no.20 could be caused by butt of a Gun. Abrasion could have been caused by fall. It could also have been caused by use of lathi. As regards faecal matter, he could not opine as to whether the deceased-Sunder Lal had relieved himself prior to the incident or not. In cross-examination, defence has not been able to discredit his testimony or the post-mortem report and the prosecution's case based thereon.

20. P.W.2 is the doctor who conducted autopsy on the body of the deceased Gauri Shankar and has also proved his post-mortem report. He has also stated that except for injury nos.2

and 9, all other injuries had been caused by firearm. He has clarified his statement after being recalled that undigested food was found in the large intestine. He has stated that he had incorrectly stated about undigested food in the small intestine. The reference to undigested faecal matter was in fact a reference to undigested food in the intestine. Mere presence of faecal matter or undigested food as noticed hereinabove, by itself, does not persuade us to opine that incident had not occurred at 09:00 A.M. Sri Verma, learned A.G.A. has rightly argued that this could be for various reasons such as constipation etc and merely because of presence of faecal matter or undigested food, it was difficult to conclude that the time of occurrence was not as projected by the prosecution.

21. Mere fact that in the post-mortem report and testimony of P.W.1 and P.W.2, it is mentioned that possible time of death could be eight hours on both sides, this also does not persuade us to disbelieve the prosecution case. Unless and until the appellants succeeded in impeaching the credibility of P.W.3 and P.W.5 or showing that their testimony was one which was absolutely improbable based on medical or other evidence, it would be difficult for them to succeed in this appeal. In this context, the contention of learned counsel for the appellant that in the F.I.R., details of weapons used by specific persons has not been given by P.W.3-the informant, whereas, in his testimony before the court he has assigned specific role to the accused of having used specific weapon, therefore, this was an improvement thereby making his testimony unreliable, is unacceptable. This is not a case where P.W.3 was confronted

with his statement under Section 161 Cr.P.C. before the court below to demonstrate any contradiction/ improvement therein. An F.I.R. is not supposed to be an encyclopedia nor is it expected that each and every detail as to who fired and what weapon he used, be mentioned therein in any case. In the F.I.R., it is clearly mentioned that the accused were carrying rifles, guns and kulhari. The injuries on the body of the deceased corroborate this recital in the F.I.R. In his testimony, P.W.3 has mentioned clearly the names of those accused who were carrying rifles and others who were carrying guns and another who was carrying kulhari, therefore, this contention on behalf of the appellants cannot be the basis for acquittal of appellants This contention is also rejected.

22. When we scrutinize the testimony of P.W.3, we find that no doubt he is son of the deceased but there is no reason as to why we should disbelieve him merely on account of this relationship. His presence in the morning at the agricultural fields with his father and brother is quite natural. The narration of events by him before the court below tallies with the recitals in the F.I.R. which has been lodged promptly without there being any room for deliberation, consultation and embellishment. His testimony is corroborated by medical evidence also. In cross-examination, the defence has not been able to bring out anything which could put a question mark on his credibility. He has clearly stated that on 31.12.1983, he along with his father and brother and one Hari Pal, had gone to the agricultural fields where the 'Medh' was being repaired. They reached the field at 09:00 A.M. Putti Lal (P.W.4) along

with others were repairing the 'Medh'. At about 09:00 A.M., the accused including the surviving appellants Baram Singh, Vinod Singh, Hemraj and Chotai @ Chote Lal came out of the sugarcane fields of Kamta Pasi situated towards north-west. Gore Singh, Baram Singh and Ramu Singh were carrying rifles. Hemraj was armed with a kulhari and rest of the accused were carrying guns. The accused- Gore Singh and Nawab Singh exhorted the other accused that today they had found Gauri and Sunder who should be killed. On hearing this exhortation, his father and brother ran. The accused started firing upon them. His father and brother ran towards the east. His brother- Sunder Lal was carrying a licensed pistol and fired in defence which did not hit anybody. Ahead of the pond and near the mango tree, the accused surrounded and killed them. The accused killed them with the use of rifles, guns and kulhari. This is in tune with the recitals contained in the F.I.R. except that the testimony is more detailed which is for obvious reasons. He has clearly stated that his brother- Sunder Lal was struck with the kulhari. Medical evidence and opinion of P.W.1 support and corroborate his testimony, as, P.W.1-the doctor has clearly stated that injury nos.1 to 3 on the body of Sunder Lal could have been caused by kulhari. P.W.3 has further stated that Gore Singh took away revolver of his brother. Of course, no such revolver has been recovered but this by itself does not bely the prosecution case. The fact that no other weapon, alleged to have been used in commission of the crime, has been recovered also does not falsify the prosecution case. The law is settled in this regard. The case at hand being based on direct evidence unless credibility of ocular witnesses is

breached, the aforesaid non-recovery does not materially impact the prosecution case. P.W.4-Putti Lal and P.W.5-Nanha Singh are mentioned as having witnessed the incident and being present at the scene of crime. Their names are also mentioned in the written tehrir dated 31.12.1983. P.W.3 has proved the tehrir signed by him.

23. In cross-examination, the defence tried to suggest that P.W.3, in fact, was not present at the scene of crime but was present in G.I.C. college where physical training examination was scheduled on 31.12.1983. In this context, they have also examined D.W.2- a teacher of G.I.C. College. However, after going through the cross-examination of P.W.3 by the defence and testimony of D.W.2, we do not find anything therein so as to disbelieve the presence of P.W.3 at the scene of crime on the fateful day. In his cross-examination, P.W.3 has stated that D.W.2- Sri Narayan Shukla was his class-teacher. Classes were held from 10:00 A.M. to 04:30 P.M. Attendance was taken in both the meetings. He has stated that his examinations were over five to six days prior to the incident. This was in response to a suggestion that examinations were taking place in the last week of December. We must keep in mind that the incident is of 31.12.1983, therefore, the statement of P.W.3 that his examinations were over five to six days prior to the incident does not support the defence or bely the prosecution case. In cross-examination, he has denied having given P.T. examinations on 31.12.1983 at G.I.C. College, Unnao. He has also denied his presence in the college on 31.12.1983 in either meetings.

24. In this context, we may discuss the testimony of D.W.2- Sri Narayan Shukla, the class teacher of P.W.3. He is not the P.T. teacher. He does not say that he conducted the P.T. examinations on 31.12.1983 nor does he testify about the presence of P.W.3 at any time on the said date. He has stated that P.W.3's P.T. exams were scheduled on 31.12.1983 as per the documents available with him. This examination was to take place from 10:30 in the morning till 12:30 P.M., however, it is the P.T. teacher who could tell the exact time when the examinations had taken place. He has referred to the attendance register and stated that P.W.3's attendance is mentioned in both the meetings on 31.12.1983 and it had been written by him. In cross-examination, he has stated that P.W.3 had not appeared before him on 31.12.1983 at the college. He had not recorded his presence in both the meetings in the attendance register after seeing him, as, the result of the P.T. examination used to reach the office, therefore, based on the said results, he had marked him as present on 31.12.1983. He could not state definitely whether P.W.3 actually come to the college on 31.12.1983 or not because he had not seen P.W.3 himself. These statements in cross-examination render his testimony irrelevant and of no significance for the defence. It does not bely the prosecution case nor does it create a doubt about the presence of P.W.3 at the scene of crime on the fateful day.

25. The narration of events by P.W.3 who was minor at that time and was studying in class-VIII and also a minor on the date of recording of statement before the court is natural,

consistent and does not suffer from any contradiction which could persuade us to disbelieve his version. His testimony by itself is sufficient to convict the appellants of the offence alleged, especially as, it is corroborated by medical evidence and it is also in tune with the recitals in the F.I.R. which has been lodged promptly.

26. As regards P.W.5, no doubt, his testimony was recorded by the police one and a half months after the incident but we find that his name is mentioned as a witness of the incident in the F.I.R. itself which as already stated was lodged promptly, therefore, merely because the police did not record his statement earlier, for whatever reason, this will not create a doubt upon his testimony. From the testimony of P.W.7- Shyam Swaroop Singh-the first Investigating Officer, it comes out that after initial investigation was completed by him, investigation of the case was taken over by S.I.-Vishram Singh who recorded the testimony of P.W.5-Nanha Singh on 31.03.1984 and on that very date, chargesheet was filed. Though Vishram Singh has not been examined but as already stated, Nanha Singh (P.W.5) is mentioned as a witness in the F.I.R. itself which was lodged promptly, therefore, merely because, his statement was recorded by the Investigating Officer after one and a half months does not materially affect the prosecution case especially in view of his testimony before the court below which is substantive evidence.

27. P.W.5 has stated that when he heard the sound of firing, he along with others ran towards the said direction and when he reached the agricultural fields of Sukhlal, he saw the

accused, namely, Paggal Singh, Baram Singh, Gore Singh, Sripal Singh, Chotai, Kaloni, Hemraj, Nawab Singh, Ramu Singh and Vinod Singh. Gore Singh, Ramu Singh and Baram were carrying rifles. Hemraj was carrying a kulhari and rest were carrying guns. These people were going away after killing the deceased. He along with others chased them but they ran away. He has not seen the accused actually killing the deceased but has seen them on the spot where the crime was committed, running away, carrying weapons.

28. There is no reason to disbelieve his testimony. If P.W.5 was a planted witness then he could have very well stated falsely that he had seen the appellants committing the crime, instead, he has spoken the truth and stated that he reached the scene after hearing the sound of gunfire and saw the accused with weapons, running away from the scene, which is quite natural. In cross-examination, the defence has not been able to bring out anything so as to make his presence at the scene of crime improbable or unnatural.

29. Even otherwise, as already stated, the testimony of P.W.3 which is corroborated by medical evidence is itself sufficient to convict the appellants.

30. The presence of the appellants at the scene of crime armed with weapons such as rifles, guns and kulhari itself proves the charge under Section 148 I.P.C. as also unlawful assembly i.e. offence under Section 149 I.P.C. The fact that they had actively taken part in the murder of the deceased is also proved from the evidence on record. Therefore, the offence

punishable under Section 302 I.P.C. read with Section 149 and 148 I.P.C. are proved as having been committed by the appellants referred above beyond reasonable doubt. The trial court has rightly convicted the appellants.

31. Based on the aforesaid, we are of the opinion that prosecution has proved the charges against the appellants beyond reasonable doubt. The appeal fails and is **dismissed**.

32. The appellant nos.3, 6, 8 and 10 are on bail. They shall be taken into custody forthwith and sent to jail to serve out the sentence. The Chief Judicial Magistrate concerned shall ensure compliance of the same.

33. The original records shall be remitted back to the trial court for necessary action, as per rules.

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

Order Date :- 12.12.2023

Shanu/-