

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

Neutral Citation No. - 2023:AHC-LKO:85017-DB

Reserved on 20.09.2023

Delivered on 22.12.2023

Court No.9

Case :- CRIMINAL APPEAL No. - 254 of 1984

Appellant :- Kali Charan And Others

Respondent :- The State

Counsel for Appellant :- Sushil Kumar,Ajeet Kumar
Singh,Pradeep Kumar Tripathi

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per : Hon'ble Ajai Kumar Srivastava-I, J)

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

2. This appeal was filed by four appellants to assail the judgment and order dated 13.03.1984, passed by Special Sessions Judge, Sitapur in Sessions Trial Nos.89 of 1983, whereby the appellants have been convicted and sentenced to undergo ten years' rigorous imprisonment for the offence under Section 364/34 I.P.C. and life imprisonment for the offence under Section 302/34 I.P.C. and they have also been convicted and sentenced to undergo seven years' rigorous imprisonment for the

offence under Section 201/34 I.P.C. All the sentences were directed to run concurrently.

3. From a perusal of record, it transpires that the instant criminal appeal was filed by four appellants, namely, Kali Charan, Shiv Ram, Lalai & Angney, out of which, appellants, Shiv Ram, Lalai & Angney, appellant nos.2 to 4 respectively, have died. The instant appeal in respect of appellant nos.2 to 4 has already been abated. Therefore, the appeal survives only with regard to the appellant no.1, namely, Kali Charan.

4. The prosecution story, in brief, is that on 21.09.1982 at about 1:30 PM, Girja Shanker, along with the victim Ram Sahai reached near a pond for harvesting water spinach (karmua saag). At the same time, Sheo Dayal was mowing towards the southern part of the pond. At about 2:30 PM, four accused persons reached near the pond. Accused, Kali Charan was armed with Bhali and other three accused were armed with Lathi. Kali Charan caught hold of the victim, Ram Sahai and shouted that he found the enemy. Thereafter, all accused persons dragged Ram Sahai in the sugarcane field which is situated towards west of the pond. Ram Sahai screamed, which led Sheo Dayal to run towards sugarcane field to help him. One other person, namely, Rajendra singh also reached near the sugarcane field after hearing the noise. Accused, Kali Charan threatened these witnesses that if they try to help Ram Sahai they will also be killed. Appellant, Kali Charan then dragged Ram Sahai in the sugarcane field. Thereafter, these witnesses ran towards the house of

complainant, father of Ram Sahai to inform him about the incident. After getting this information, the complainant along with other 5-6 villagers tried to trace the whereabouts of Ram Sahai near the pond but they could not trace the whereabouts of Ram Sahai. The dead body of deceased, Ram Sahai was recovered on 22.09.1982 from the pond.

5. On the basis of aforesaid, First Information Report, Ext. Ka-4 was registered as Crime No.131 of 1982, under Sections 364, 201 & 302 I.P.C., Police Station Ramkot, District Sitapur.

6. After registration of the case, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C., prepared the site plan, Ext. Ka-6 & 14 and upon completion of investigation, charge-sheet, Ext. Ka-3 was also submitted against accused-appellants.

7. As per postmortem report of the deceased, Ram Sahai @ Kallu, Ext. Ka-2, which has been proved by Dr. Suresh Chandra Gupta, PW-5, following injuries were reported on the person of the deceased:-

1	Multiple abraded contusion in area of 4.5 cm x 4.5 cm placed on the left side of face 2 cm bellow from outer left eyeball.
2	Lacerated wound 2 cm x 1.5 cm muscle deep placed obliquely on lower lip of left side.
3	Contusion 6 cm x 5 cm placed on right side face 3.5 cm bellow from outer right eyeball.
4	Gums of upper jaw and teeth are lacerated, mucos membrane of upper lip has also lacerated.

The cause of death of the deceased, Ram Sahai @ Kallu, according to postmortem report, Ext. Ka-2, was reported to be asphyxia as a result of smothering.

8. The accused-appellants were charged for the offences under Sections 364/34, 302/34 and 201/34 I.P.C., which were read over and explained to them, to which, they pleaded not guilty and claimed to be tried.

9. To bring home guilt of accused-appellants, the prosecution has examined as many as seven prosecution witnesses i.e. PW-1, Sri Ram, PW-2, Sheo Dayal, PW-3, Girja Shanker, PW-4, Sunder, PW-5, Dr. Suresh Chandra Gupta, PW-6, S.I. Shri Netrapal Singh and PW-7, Shri Ram Bilas Singh.

10. After conclusion of prosecution evidence, statements of accused-appellants were recorded under Section 313 Cr.P.C. The accused-appellants have stated the prosecution case to be false, claimed themselves to be innocent and also stated to have been falsely implicated.

11. No witness in defence was adduced by the accused-appellants.

12. The trial Court concerned, after appreciating the evidence available on record, passed the impugned judgment and order dated 13.03.1984, whereby the accused-appellants came to be convicted as aforesaid.

13. Aggrieved by the impugned judgment and order dated 13.03.1984, the accused-appellants have preferred the instant criminal appeals.

14. Learned counsel for the surviving accused-appellant has submitted that the finding of guilt of surviving accused-appellant is based on surmises and conjunctures only. His further submission is that the finding of guilt has been recorded against the weight of evidence available on record which renders the impugned judgment and order dated 13.03.1984 perverse. He has also submitted that the prosecution story, as contained in written report, Ext. Ka-1, is wholly unreliable. The testimonies of PW-2, Shiv Dayal and PW-3, Girja Shanker, the witnesses of fact, are also full of contradictions. Hence, the learned trial court's reliance on these unreliable testimonies led to an erroneous finding of guilt of the accused-appellants.

15. It has also been contended that the deceased was killed by some unknown persons and as the police could not trace the real culprits, the surviving accused-appellant was falsely planted in this case. He has also submitted that the witnesses of fact have deposed against the surviving accused-appellant due to enmity. He, thus, submits that the conviction and sentence awarded by the impugned judgment and order dated 13.03.1984 is not sustainable in law, therefore, the same deserves to be set aside.

16. Per contra, learned A.G.A. has opposed the submissions made by learned counsel for the surviving

appellant. He submits that the surviving accused-appellant has been convicted by the learned trial Court after proper appreciation of evidence available against him.

17. Learned A.G.A. has further submitted that the prosecution has proved its case against the surviving appellant on the basis of cogent and reliable testimonies of prosecution witnesses. His further submission is that the testimonies of witnesses of fact, PW-1, Shriram, PW-2, Shiv Dayal and PW-3, Girja Shanker are consistent and cogent. It is not a case of false implication. Therefore, he submits that the surviving appellant has been convicted by the impugned judgment and order dated 13.03.1984, which is well discussed and reasoned, wherein no interference by this Court is warranted.

18. Having heard learned counsel for parties and upon perusal of the record, we find that the first informant, Shriram, PW-1 is father of the deceased. He is not an eye witness of this incident. According to written report Ext. Ka-1, on 21.07.1982 Ram Sahai @ Kallu son of first informant had gone to fetch water spinach (karmua saag) from the pond. At about 2:30 P.M. in the afternoon, he was informed by Girja Shankar, PW-3, Shiv Dayal, PW-2 and Rajendra Singh that his son Ram Sahai @ Kallu had been caught by the accused-appellants and they had taken away his son towards west direction. This incident was witnessed by Girja Shankar, PW-3 and Shiv Dayal, PW-2 who were present in adjoining agricultural fields. The appellants were saying that Ram Sahai @ Kallu will be done to death. When alarm was raised by these witnesses,

the accused-appellants threatened them. Surviving accused-appellant, Kali Charan was armed with Bhali, therefore, these witnesses did not chase the accused-appellants.

19. It emerges from the testimony of PW-1, Shriram, first informant, who has proved the written report Ext. Ka-1, that after coming to know about this incident, this witness along with 5-6 persons went to the pond where he did not find anyone. Thereafter this witness went to police station and got the first information report lodged. He has, thus, proved the written report, Ext. Ka-1. It also appears that the dead body of deceased was found in the western corner of pond on the next day i.e. on 22.09.1982.

20. As per postmortem report of the deceased, Ram Sahai @ Kallu, Ext. Ka-2, which has been proved by Dr. Suresh Chandra Gupta, PW-5, the cause of death of the deceased, is reported to be asphyxia as a result of smothering. There were four other antemortem injuries also reported on his body.

21. The fact of the recovery of the dead body of the deceased from the pond has been proved by PW-3, Girja Shankar. He has specifically stated that on the next day of the occurrence, i.e. on 22.09.1982, at about 10:00 A.M., he alongwith PW-4, Sundar entered into the pond and conducted a search on the instructions of investigating officer, S.I. Netrapal Singh, PW-6, which resulted in the recovery of the dead body of the deceased. The dead body was found stuck in the bush of bindweed (besharam) in

the pond, approximately two and a half meters inside the pond. Sundar, who accompanied with this witness in the search of dead body of the deceased, has also been examined as PW-4. He has also supported the prosecution case in this regard. Thus, prosecution has been able to prove this fact that the dead body of deceased, Ram Sahai was found on 22.09.1982, stuck in the bush of bindweed (besharam) in the pond, which is very close to the place where witnesses of fact, PW-2, Shiv Dayal and PW-3, Girja Shanker had seen the deceased last, who was taken away by the appellants including the sole surviving appellant, armed with Bhali, a pointed weapon.

22. As stated above, the prosecution story is based on the theory of 'last seen'. According to PW-2, Shiv Dayal and PW-3, Girja Shanker, the appellants were last seen with the deceased near the pond from where the dead body of the deceased was recovered. The fact that the appellants were last seen with the deceased has been duly proved by the prosecution through reliable testimonies of PW-2, Shiv Dayal and PW-3, Girja Shanker. Having regard to the place of occurrence and the places where these witnesses were present and from where they saw the appellants taking away the deceased appears to us to be natural. There is nothing on record to show that the presence of witnesses of fact, PW-2, Shiv Dayal and PW-3, Girja Shanker was improbable. A close scrutiny of testimonies of PW-2, Shiv Dayal and PW-3, Girja Shanker reveal that there testimonies are consistent with the prosecution story as contained in written report Ext. Ka-1, which has been proved by PW-1, Shriram, first informant.

23. Thus, having regard to the time when the appellants were last seen with the deceased and considering the approximate time of his death as mentioned by autopsy surgeon, Dr. S.C. Gupta, PW-5, we find that the prosecution has been able to prove the fact that the appellants including the sole surviving appellant were last seen with the deceased before his death. Once the appellants were seen with the deceased, thereafter, the deceased was not found alive; rather his dead body was recovered on 22.09.1982 from the pond. Therefore, in such factual situation, the appellants were under legal obligation to explain as to how and in what manner they parted with the company of the deceased. However, we do not find any explanation offered by the sole surviving appellant as to how and in what manner they parted with the company of the deceased. Therefore, we are of the considered opinion that the prosecution has been able to prove its case against the appellants beyond reasonable doubt. As a result, we do not find any infirmity or perversity in the impugned judgment and order dated 13.03.1984, whereby the appellants have been held guilty of the offence under Sections 364/34, 302/34 & 201/34 I.P.C.

24. In view of the aforesaid, we do not find any merit in the instant appeal, which deserves to be dismissed and is, accordingly, **dismissed**.

25. The surviving appellant, Kali Charan is on bail. His bail bonds are cancelled. Sureties are discharged. The surviving appellant, Kali Charan 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.

26. 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.

Order Date :- 22.12.2023

A.Dewal

(Ajai Kumar Srivastava-I, J)

(Rajan Roy, J)