

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

Neutral Citation No. - 2023:AHC-LKO:72383-DB

Reserved on:05.10.2023

Delivered on:03.11.2023

Court No. - 9

Case :- CRIMINAL APPEAL No. - 2023 of 2004

Appellant :- Ram Jage And 5 Ors.

Respondent :- State of U.P.

Counsel for Appellant :- Yojendra Singh,Amul Mani Tripathi,Anand Kumar Arya, B.N. Sirswal, Bhupendra Veer Singh,Dinesh Kumar Dixit, Hanuman Singh, K.K.Singh,K.N.Misra,R.P. Verma,Rajesh Kumar Singh, Ravi Singh,Shubham Gupta,Sri Chandra Mishra,Vivek Sirswal
Counsel for Respondent :- Govt.Advocate

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per : Rajan Roy, J.)

1. Heard Shri Vivek Sirswal along with Shri Hanuman Singh and Shri Rajesh Kumar Singh, learned counsel for the appellants no. 1 and 4 respectively as also Shri R.S. Diwedi, learned A.G.A. for the State.
2. This is an appeal under Section 374 Cr.P.C. preferred by the appellants challenging their conviction and sentencing vide judgment dated 02.08.2004 passed in Sessions Trial No. 376 of 1985 (State Vs. Ram Jage and Ors.) arising out of Case Crime No. 143 of 1984, under Sections 148, 302/149, 307/149 IPC, Police Station - Katra Bazar, District - Gonda.

3. The appellants have been convicted for the offence punishable under Section 302/149 IPC and sentenced to life imprisonment with fine of Rs.5,000/- each failing which they would have to undergo additional rigorous imprisonment for six months. They have also been convicted under Section 148 IPC for which they have been sentenced to undergo rigorous imprisonment for three years and under Section 307/149 IPC for which they have been sentenced to undergo imprisonment for seven years each with fine of Rs.2000/- each failing which they would have to undergo further imprisonment for three months.

4. It is not out of place to mention that the appeal as on date survives only against Appellant No. 1-Ram Jage and Appellant No. 4-Sangam Lal. The appeal against other appellants, namely, Dharamraj, Nanku @ Nankun @ Lambo, Ram Dev and Patte Lal has already abated on account of their death.

5. It is also not out of place to mention that in fact, there were total of 8 accused against whom trial was held. There were three trials which were jointly held. Appellants no. 1 to 5 were the accused in Sessions Trial No. 376 of 1985. One Mishri Lal was the accused in Sessions Trial No. 465 of 1987. He died during trial as such it abated. Patte Lal was the accused in Sessions Trial No. 309 of 1988. He is appellant no. 6 herein but has died during pendency of this appeal which has abated as regards him, as already stated.

6. The prosecution case is that at about 1.00 or 1.30 in the night of 27.09.1984 Jadunath, Shivnath along with Gurudin and Shiv Prasad came running to the house of informant - Prabhunath Pandey and they informed Prabhunath Pandey that yesterday some altercation had taken place between their father Babadeen and Mahadev Lodh regarding fixing of 'Khunta' whereupon Harinath the son of the deceased had hit

the wife of accused Mahadev and Mahadev had threatened with dire consequences. At 12.00 in the night the said Mahadev Lodh and his son Patte Lal, Ram Jage, Dharamraj and certain persons of village Madhopur, namely, Sangam Lal, Ram Dev and Nankun @ Lambo of Ahiran Ka Purwa as also 4-5 other persons, whose name the children did not know, came, armed with 'Farsa', 'Ballam' and 'Lathi' and started beating Babadeen and Harinath who were sleeping under the 'Madaha'. Some of these accused entered the house and came inside the courtyard and started beating Nankun who was sleeping. When Nankun's mother Ganga Dei PW-2 threw herself over Nankun to protect him, they pushed her side. These people killed Nankun, Babadeen and Harinath. Ganga Dei W/o Babadeen was lying injured. Accordingly, on being informed the police reached the scene of crime and found Ganga Dei lying unconscious. Ganga Dei was taken to a hospital by villagers. The F.I.R. was lodged at about 3.00 a.m. on 27.09.1984.

7. Inquest was held. Postmortem of the deceased body was conducted. The body of the deceased had several injuries. Based on the medical evidence on record it is evident that all three deceased were murdered.

8. The only question in this appeal is as to whether the appellant no. 1- Ram Jage and appellant no. 4- Sangam Lal were involved in the said murder or not.

9. Learned counsel for the appellants submitted that entire case of the prosecution is based on the testimony of the injured eye witness PW-2 (Ganga Dei) as the other alleged eye-witness PW-3 (Jadunath) was declared hostile. It was submitted that the testimony of PW- 2 suffers from contradictions and inconsistencies and considering the nature of injuries on her body it was highly improbable that she would

have been conscious to see the incident as narrated by her. The appellants have been falsely implicated merely because the police was against them. Otherwise, there is no evidence to prove their guilt. The trial Court has not tried to differentiate between the role and the evidence available against them separately, but, has clubbed all the accused together and convicted them on conjectures and surmises merely because it was a case of triple murder. The crime is said to have been committed in the dark of the night. According to the appellants' counsel the light as mentioned by PW-2 was insufficient for her to see the assailants, especially as, she was herself grievously injured and the testimony of PW -1 also that when he reached the scene of crime he saw PW-2 lying unconscious. PW-2 has herself stated that she regained consciousness in the hospital, therefore, her entire testimony is unreliable.

10. On the other hand learned A.G.A. has vehemently opposed the appeal and submitted that the crime committed was a grave and heinous one. Three persons of the same family were murdered. The motive was proved from the testimony of PW-2 which was of altercation which took place a couple of days ago. There was a prior land dispute between the parties as has come in the testimony of PW- 2, therefore, with this motive the appellants murdered the three deceased. The postmortem report clearly proves that it was a case of triple murder. PW-2 is an injured witness, therefore, her testimony is credible. The inconsistencies and contradictions, if any, are minor and do not materially effect the prosecution case. She has clearly mentioned the name of Sangam Lal in the opening sentence of her testimony whom she recognized as one of the accused present in Court. She has also mentioned about having heard the name of Ramjage as having been taken by her husband, pleading for mercy. In these circumstances, this is sufficient to convict the appellants no. 1 and 4.

11. The case of prosecution is based on direct evidence of PW-2 the wife of the deceased- Babadeen and PW-3- Jadunath the son of the deceased Babadeen, apart from medical and other evidence. The case essentially hinges on the testimony of PW-2 and PW-3.

12. PW-1 the informant is not an eye witness of the commission of the crime, but, he is the witness of the crime scene, having reached there on getting information as stated earlier. He had seen the injured witness PW-2 lying at the scene of crime, unconscious.

13. The injury report of PW-2 mentions several injuries, therefore, there is no doubt that she was injured in the incident which took place on 27.09.1984.

14. PW-3 the son of deceased Babadeen did not support the prosecution case and turned hostile and was declared hostile. He has denied having given any such statement implicating the appellants herein for having committed the crime, to the Police, therefore, his testimony is of no help to the prosecution case.

15. The Investigating Officer of the case has not been examined.

16. We have to see as to whether testimony of PW - 2 is reliable and sufficient to convict the appellant no. 1 and appellant 4- Sangam Lal or not.

17. After perusing testimony of PW-2 we find that there is no such statement therein may having seen the appellant no. 4-Sangam Lal committing the crime, whether on the body of the deceased Babadeen and Hari Nath outside the house under the 'madaha' or on the body of Rishinath who was sleeping in the courtyard where PW-2 was also sleeping. In the initial lines of her statement she has mentioned that she recognized Sangam Lal, Ramdev, Mishrilal, Dharamraj, Ramjage and Mahadev who were present in Court and out of these Ramjage,

Dharamraj and Mahadev were residents of her village. Patte was also resident of her village and he was son of Mahadev. Rest of the three accused were residents of Madhavpur and used to visit the house of Mahadev, therefore, she recognizes them. However, in our opinion if she knew and recognized Sangam Lal also, then, why she has not mentioned his name as one of the assailants whether on the body the the deceased Babadeen and Harinath outside the house or that of Rishinath inside the house, is inexplicable.

18. We have carefully gone through testimony of PW-2. We find that she has mentioned the motive of murder as an altercation between accused Mahadev and Harinath and Nankun @ Rishnath, but, so far as narration of the events which took place in the fateful night she has stated that her husband Babadeen and Harinath were sleeping under the 'madaha' just outside the house. She was lying in the courtyard on a cot along with Meena Kumari and on the other cot in the courtyard the deceased Rishinath @ Nankun was lying. The sadar door of the house was towards the East. She was lying on the cot about one step away from the said door. The door was closed. There was a lantern which had been lit in the courtyard. Outside also there was one lantern. Outside the house there was a 'madaha' adjacent to it, under which her husband and Jadunath PW-3 were sleeping on the cot. On the second cot the other son Harinath and Shivnath were sleeping. There were two openings in the 'madaha'. She woke up on the barking of dogs. The accused Dharamraj Misr, Shivraj and Ramdev came. Apart from them two other persons came inside whom she could not recognize. Ramdev was armed with 'ballam' and Dharamraj and Mishri were armed with Battle Axe. They started beating her son Nankun @ Rishinath. Now, we notice that she mentions five persons as having entered the courtyard who were armed and who started beating the deceased Rishinath. She recognizes three of them and does not recognize the remaining two. In the opening part of her statement she has mentioned that she knows Sangam Lal,

yet, she does not mention him as one of the assailants who entered the courtyard, therefore, obviously Sangam Lal was not involved in the incident which took place inside the courtyard involving the murder of deceased Rishinath and beating up of PW-2 (Ganga Dei). She has stated that as a result of beating by the aforesaid five persons, which does not include Sangam Lal, Rishinath died.

19. She has stated in her cross-examination that it was a dark night when the incident took place, although, she has referred to light from the lantern which was hanging on the 'hook' (khonti). She has reiterated that she woke up on the barking of the dogs. By then the accused had not been beaten her up or her son inside the courtyard, but, they had entered the courtyard. Five persons had entered the courtyard. Out of these five Dharmraj belonged to her village but Ramdev and Shivraj belonged to another village. She did not recognize the other two persons. Here again she does not mention Sangam Lal whom she claims to know as per opening line of statement in examination-in-chief. She has also stated that none of the said five persons, who had entered the courtyard, had covered their faces. If that was so and she knew Sangam Lal, then, she would have recognized him, but, she has not done so.

20. It is also apparent that Ramjage the appellant no. 1 did not enter the courtyard to assail PW-2 Ganga Dei or her son Rishinath. In fact she had heard Ramjage's name from the shouts of her husband etc. outside the house but had not seen him committing the crime. In her cross-examination she has further stated that entire incident inside the house i.e. the courtyard lasted for 2-3 minutes. She became unconscious as a result of this beating and regained consciousness only in the hospital.

21. So far as the incident which took place outside, she has stated in her examination-in-chief that her husband Babadeen and son Harinath were pleading to the accused to spare their life and were taking names of Mahadev, Patte, Ramjage and Nanku, that is how she came to know

that outside also people were being beaten. She has stated that she does not remember name of any other accused. Now, this goes to show that whatever transpired outside the house where her husband etc. were sleeping, was not seen by PW-2 Ganga Dei, but, she only heard the deceased taking the name of some of the accused, which did not include the name of Sangam Lal, although, she heard the name of Ramjage, appellant no. 1. She has also stated in examination-in-chief that she fell unconscious as a result of beating by the five accused who had entered the courtyard. She was admitted to Gonda Hospital.

22. In her statement she has not provided any motive for appellant no. 4 who was a resident of another village to commit the said crime.

23. From the sequence of events narrated by her, the beating of her husband etc. took place earlier and, thereafter or simultaneously, she and her other son Rishinath were beaten up inside the house. In her cross-examination she has stated that she did not move out of the courtyard, which further goes to show that she did not go out and see the crime being committed upon her husband or other son outside the house. However, thereafter she has tried to improve upon her statement by saying that she had told the 'Daroga', which is a reference to her statement under Section 161 Cr.P.C., that she had seen the assailants who had committed the crime outside the house and had recognized them. At this stage, she was shown her statement under Section 161 Cr.P.C. which does not contain any statement whereupon she has stated that she does not know as to why it has not been mentioned by 'Daroga' in her statement. Thereafter, she has gone on to state that even before the Court she had mentioned in her statement that she saw the assailants outside the house and had recognized them. The Court below has made an endorsement to the effect - "*there is no such statement in her statement-in-chief or cross-examination made earlier before this Court.*"

24. Thereafter, in the cross-examination she has stated that she was unable to tell the Court as to what weapons were being carried by the assailants who had committed the crime outside the house (not in the courtyard). She has again stated that inside the house Ramdev was carrying a 'bhala', Dharamraj was carrying a 'farsa' and Mishri @ Shivraj was also carrying a 'farsa'. The rest of the assailants whom she did not recognize, were carrying 'lathi'. Here again, she does not mention the name of Sangam Lal and Ramjage, therefore, they were not involved in the crime committed inside the house and as already stated earlier, she has nowhere named Sangam Lal as being involved in the crime being committed outside the house.

25. In fact from her statement in cross-examination it is evident that she did not see the crime being committed outside the house and there are apparent contradictions and inconsistencies in this regard which show that she is not a reliable witness so far as the assailants who were allegedly committing the crime outside the house as she did not see the said incident.

26. She has stated in her cross-examination that she remained in the hospital of Gonda for 20-25 days. After being discharged from the hospital she went to her relatives, as, she feared for her life and that of her children. She has also stated that her statement was recorded by the 'Daroga' two and half months after the incident when she was called by him to the village. This itself creates a big question mark on the prosecution story and the credibility of its witness.

27. She has also stated in cross-examination that Patte, Sangam Lal, Ramdev and Nankau were anti-social elements and that is why the police did not like them. It has come in the suggestion made by the defence that these accused were falsely implicated at the behest of the police, as, the police was against these persons.

28. In view of the above discussion, we are of the opinion that testimony of PW-2 is not at all reliable so far as the appellant no. 1 Ramjage and Appellant No. 4- Sangam Lal are concerned. None of these are stated by PW -2 to have been involved in the incident which took place inside the house i.e. in the courtyard, which, the PW-2 claims to have seen. The name of Sangam Lal was not heard by PW-2 with regard to the incident outside the house, though, she heard the name of appellant no. 1. But the fact remains that she has not herself seen the incident which took place in the fateful night outside the house, therefore, her testimony can not be made the basis for convicting the appellants. The trial Court has erred in not taking into consideration these aspects of the matter and has proceeded to hold the appellants no. 1 and 4 guilty of the offence alleged, along with other accused, without proper appreciation of evidence and without appropriately considering the reliability of testimony of PW-2. As already stated PW-3 the other eye witness was declared hostile and his testimony does not support the prosecution story. Therefore, so far as appellant no. 1- Ramjage and appellant no. 4- Sangam Lal are concerned, prosecution has failed to prove their guilt beyond reasonable doubt. There is no recovery from them, nor at their instance, which may link them to the crime.

29. We, accordingly, **allow** their appeal and set-aside the judgment of the trial Court relating to appellant no. 1- Ramjage S/o Mahadev and appellant no. 4- Sangam Lal S/o Ramkesh.

30. The appellant no. 1 and appellant no. 4, who are in jail, shall be released forthwith.

31. The appellant no. 1 and appellant no. 4 are directed to file a 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 from the date of release.

32. The original records shall be remitted back to the trial Court for necessary action, if any.

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

Order Date :-03.11.2023

R.K.P.