

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2023:AHC-LKO:72571-DB

Reserved on :- 21.09.2023
Pronounced on :- 03.11.2023

Court No. - 4

Case :- JAIL APPEAL No. - 1166 of 2007

Appellant :- Hit Kishore @ Kaliya

Respondent :- State of U.P.

Counsel for Appellant :- In Person, Begum Sabiha
Kamal, Dev Kumar Tripathi, Vishwas Shukla

Counsel for Respondent :- Govt. Advocate

and

Case :- CRIMINAL APPEAL No. - 1114 of 2007

Appellant :- Chhotey Lal

Respondent :- The State Of U.P.

Counsel for Appellant :- Anil Kumar Mishra, Begum
Sabiha Kamal, Vishwas Shukla

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajesh Singh Chauhan, J.

Hon'ble Ajai Kumar Srivastava-I, J.

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

1. Heard Sri Vishwas Shukla, learned amicus curiae for the appellants, Sri R.S. Dwivedi, learned A.G.A. for the State and perused the material available on record.

2. Under challenge in these appeals is the impugned judgment and order dated 10.04.2007 passed by the learned Special Judge (S.C./ S.T.) Act, Lucknow, in Sessions Trial No.192 of 1997 titled as State vs. Vinod Yadav and others arising out of Crime No.400 of 1996, under Sections 147, 302 read with Section 149, 436 of the Indian Penal Code¹ and Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989², Police Station Alambagh, District Lucknow whereby the appellant, Hit Kishore @ Kaliya in Jail Appeal No.1166 of 2007 and the appellant, Chhotey Lal in Criminal Appeal No.1114 of 2007 have been convicted and sentenced to undergo two years' rigorous imprisonment for the offence under Section 147 I.P.C. They have also been convicted and sentenced to undergo life imprisonment with a fine of Rs.20,000/- each for the offence under Section 302 read with Section 149 I.P.C and in default of payment of fine, they have further been directed to undergo 6 months' additional simple imprisonment. All the sentences have been directed to run concurrently.

3. Since the aforesaid appeals have been preferred to assail impugned judgment and order dated 10.04.2007 passed by the learned Special Judge (SC/ ST) Act, Lucknow, in Sessions Trial No.192 of 1997 titled as State vs. Vinod Yadav and others arising out of Crime No.400 of 1996, under Sections 147, 302 read with Section 149, 436 I.P.C. and Sections 3(2)(v) S.C./ S.T. Act, Police Station Alambagh, District Lucknow , therefore, they have been

¹ hereinafter referred to as "I.P.C."

² hereinafter referred to as "S.C./ S.T. Act"

heard together and are being decided by a common judgment.

4. The case of the prosecution in nutshell is that a written report was submitted by the first informant, S.I. Akshay Sharma posted at Police Station Police Line, District Lucknow stating therein that on 31.10.1996, he was on duty to take the prisoners from the jail to court in the morning. On 31.10.1996 at about 5:00 P.M, 51 prisoners boarded on Government Vehicle No.UP 32 A 7502 along with driver Ramsewak, Head Constable Niyamat-Ullah, Constable C.P Jatashankar Dubey, Constable C.P Lal Bihari and Constable Kusum Jaiswal, who left for jail from the court. At about 5:20 P.M, when the Government Vehicle reached K.K.C College, he heard noise and screams emanating from the inside of Government Vehicle. The Government Vehicle was stopped for ascertaining the reasons of such screams. While checking, it was found that, prisoners namely, Vinod and Mohan were trying to strangle other prisoner, Dagru by means of towel (*anghaucha*) and six other prisoners were beating Dagru. On witnessing this incident Dagru's nephew, namely, Sundar Pasi told the name of six persons. Sundar Pasi tried to stop the assailants. In the meanwhile, seven other prisoners tried to break open the Government Vehicle's gate. On seeing the situation getting worsened, the Government Vehicle was brought to the jail. When the vehicle came to a halt, one Vinod Yadav set ablaze Dagru's clothes. These seven prisoners were shifted

into another Government Vehicle bearing Registration No. UML 9424. Dagru was found dead. Fire was extinguished.

5. The inquest proceeding was conducted, which has been duly proved by P.W.-6, Constable Jata Shankar Dwivedi as Ex. Ka-5.

6. According to postmortem report of the deceased, Dagru, which has been duly proved by P.W.-3, Dr. N.K. Tripathi as Ex. Ka-2, the cause of death of the deceased, Ex. Ka-2, is reported to be asphyxia as a result of throttling and strangulation. There were six other antemortem injuries reported on his body, which were either lacerated or contused wounds.

7. On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, S.I. Akshay Sharma, the first information report, Ex. Ka-3 came to be lodged against the accused/ appellants for the offence under Sections 147, 302, 436 I.P.C. and Sections 3(2)(v) S.C./ S.T. Act.

8. The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C. He visited the place of occurrence and thereafter, upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ex. Ka-11 against the accused/ appellants for the offence under Sections 147, 302/149, 436 I.P.C. and Sections 3(2)(v) S.C./ S.T. Act.

9. Charges for the offences under Sections 147, 302/ 149, 436 I.P.C. and Section 3(2)(v) S.C./ S.T. Act were framed against the present accused/ appellants, who denied the charges and claimed to be tried.

10. In order to bring home guilt of the appellants, the prosecution has examined Sundar Lal as PW-1, S.I. Akshay Sharma, who is the first informant, as PW-2, Dr. N.K. Tripathi as PW-3, Head Constable Bechu Ram as PW-4, Constable Lal Bihari as PW-5, Constable Jatashankar Dwivedi as PW-6, Ravindra Kumar, City Magistrate as PW-7, Satish Chandra Pandey, the then Circle officer, as PW-8 and Mohd. Iliyas, the then Circle Officer, as P.W.-9.

11. The appellants in their statements recorded under Section Section 313 Cr.P.C. have stated the prosecution story to be false. They have also stated to have been falsely implicated in this case and they claimed to be innocent.

12. No evidence in defence was adduced by the accused/ appellants. However, some judgments have been referred on behalf of the accused/ appellants before the learned trial court.

13. The learned trial court, after appreciating the evidence available on record, passed the impugned judgment and order dated 10.04.2007 whereby the appellants came to be convicted as aforesaid.

14. Aggrieved by the aforesaid impugned judgment and order dated 10.04.2007, the appellants have preferred the instant criminal appeal.

15. Learned *amicus curiae* for the accused/appellants has submitted that the impugned judgment and order dated 10.04.2007 is against the weight of evidence, therefore, the same is unsustainable. Elaborating the reasons therefor, he submits that the appellants had no motive to commit murder of the deceased, Dagru. According to P.W.-1, Sundar Lal, the appellants had no motive to kill the deceased. Therefore, the finding of guilt of the appellants is unsustainable and deserves to be set aside.

16. His further submission is that the prosecution story is improbable. In fact, according to him, the deceased died due to use of third degree by the police personnel and in order to shield their own crime, the appellants were falsely implicated in this case. He has also drawn our attention to the fact that it was not possible for P.W.-2, S.I. Akshay Sharma, who is the first informant, to have seen and witnessed the incident, therefore, no reliance on his testimony can be placed. Thus, the appeals deserve to be allowed.

17. Per contra, learned A.G.A. for the State, in support of the prosecution case, has submitted that the prosecution had examined nine prosecution witnesses. The prosecution case has been successfully proved by the prosecution on the basis of reliable and cogent testimonies

of prosecution witnesses. Therefore, no interference by this Court is warranted.

18. Having heard learned *amicus curiae* for the appellants, learned A.G.A. for the State and upon perusal of record, we find that according to prosecution story as contained in the written report, Ex. Ka-1, which has been duly proved by P.W.-2, S.I. Akshay Sharma, the deceased and the appellants were being brought from court to jail on the date of incident after their appearance in the court. P.W.-2, S.I. Akshay Sharma has categorically stated that on hearing commotion, he got the vehicle bearing No.U.P. 32 A 7502 stopped and checked the vehicle. Thereafter, he saw that the deceased, Dagru was being strangulated by Vinod Yadav S/o Lalaram whereas other six under trials including the present appellants were beating the deceased by fists. He has also submitted that the nephew of the deceased, namely, P.W.-1, Sundar Lal was also travelling in the same vehicle, who also informed him about the entire incident. The vehicle was brought to jail where the deceased, Dagru was found dead. This witness P.W.-2, S.I. Akshay Sharma has proved the written report, Ex. Ka-1. P.W.-1, Sundar Lal is the nephew of the deceased, who has also supported the prosecution case as contained in written report, Ex. Ka-1.

19. It also transpires that the present appellants have been assigned role of assaulting the deceased with fists. There were many such injuries including two contusions and lacerated wounds, which corroborate the manner of commission of crime by the present appellants.

Having regard to the manner of commission of offence, it appears to us that the appellants were sharing the common object to kill the deceased.

20. We have carefully scrutinized testimonies of two witnesses of fact, namely, P.W.-1, Sundar Lal, an eye witness and P.W.-2, S.I. Akshay Sharma, who is the first informant and eye witness also. We find that these two witnesses of fact have deposed in a consistent manner. There is no reason to disbelieve their consistent testimonies in respect of the incident-in-question. We do not find any such inconsistency or material discrepancy in their testimonies, which may render prosecution story to be doubtful.

21. We are oblivious of the fact that there is nothing on record to show that the vehicle, carrying the prisoners on the date of the incident, was such, which does not allow the person sitting next to the driver of the vehicle to conveniently peep into rear part of the vehicle. Therefore, we do not find any substance in the arguments of learned *amicus curiae* for the appellants that it was not possible for P.W.-2, S.I. Akshay Sharma, who is the first informant, to have witnessed the incident. Even otherwise, this incident was also witnessed by the nephew of the deceased, namely, P.W.-1 Sundar Lal whose testimony has been found by us to be consistent and reliable.

22. We also do not find any force in the submission advanced by learned *amicus* to the effect that the deceased died due to third degree method adopted against

the deceased for the reason that according to proved prosecution case, on the date of incident the prisoners were being brought back to jail from the Court after their presence in different matter. Therefore, there was no possibility of applying third degree method against the deceased.

23. Hon'ble the Supreme Court in **Kuna alias Sanjaya Behera vs. State of Odisha**³ in paragraph No.19 has held as under:-

"19. That conviction can be based on a testimony of a single eyewitness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence that is important, have been propounded consistently in Anil Phukan [Anil Phukan v. State of Assam, (1993) 3 SCC 282 : 1993 SCC (Cri) 810] , Ramji Surjya [Ramji Surjya Padvi v. State of Maharashtra, (1983) 3 SCC 629 : 1983 SCC (Cri) 748] , Patnam Anandam [State of A.P. v. Patnam Anandam, (2005) 9 SCC 237 : 2005 SCC (Cri) 1225] and Gulam Sarbar [Gulam Sarbar v. State of Bihar, (2014) 3 SCC 401 : (2014) 2 SCC (Cri) 195] with the apparent emphasis that evidence must be weighed and not counted, decisive test being whether it has a ring of truth and it is cogent, credible, trustworthy or otherwise."

24. Hon'ble the Supreme Court in **Balraje alias Trimbak vs. State of Maharashtra**⁴ in paragraph No.29 has held as under:-

"29. Law is fairly well settled that even if acquittal is recorded in respect of the co-

³ (2018) 1 SCC 296

⁴ (2010) 6 SCC 673

*accused on the ground that there were exaggerations and embellishments, yet conviction can be recorded if the evidence is found cogent, credible and truthful in respect of another accused. **The mere fact that the witnesses were related to the deceased cannot be a ground to discard their evidence.***

(emphasis supplied by us)

25. We have also been able to notice that it was not a case of the appellants that on the date of incident, they were not present in the police van, from which the deceased was also being brought from the court to the jail. We also do not find any plausible reason as to why the appellants would be falsely implicating in this case.

26. Therefore, after having given our thoughtful consideration to the rival submissions advanced by the learned *amicus curiae* for the appellants and learned A.G.A. for the State and upon a close scrutiny of entire prosecution evidence available on record, we do not find any infirmity in the finding of guilt of the appellants recorded by the learned trial court by means of impugned judgment and order dated 10.04.2007.

27. For the aforesaid reasons, the present criminal appeals lack merit and deserve to be dismissed, which are hereby **dismissed**, accordingly.

28. Hon'ble the Supreme Court in the case of **Budh Singh Vs. State of Haryana**⁵ in para 10 has held as under:-

⁵ (2013) 3 SCC 742

"10. On a detailed examination and scrutiny of the various dimensions of the question that had arisen in Sarat Chandra case [AIR 1961 SC 334] , this Court upheld the view taken by the High Court and answered the question formulated by it by holding that: (AIR p. 336, para 4)

"4. ... the effect of an order of remission is to wipe out that part of the sentence of imprisonment which has not been served out and thus in practice to reduce the sentence to the period already undergone, in law the order of remission merely means that the rest of the sentence need not be undergone, leaving the order of conviction by the court and the sentence passed by it untouched."

29. The fact that the accused/ appellants have been given benefit of remission of their sentence by appropriate Government under Section 432 Cr.P.C. has not been disputed by learned A.G.A., therefore, having regard to the law laid down by Hon'ble the Supreme Court in **Budh Singh's case (supra)**, the accused/ appellants need not surrender unless they are wanted in any other case.

30. Sri Vishwas Shukla, learned *amicus curiae*, who has assisted the Court on behalf of the appellants, namely, Hit Kishore @ Kaliya in Jail Appeal No.1166 of 2007 and Chhotey Lal in Criminal Appeal No.1114 of 2007, shall be entitled to get the fees of Rs.25,000/- from the High Court.

31. Let the lower court record, if any, along with a copy of this judgment be transmitted forthwith to the

learned trial court concerned for information and necessary compliance.

32. Let a copy of this judgment be placed on the records of connected Criminal Appeal No.1114 of 2007 titled as Chhotey Lal vs. The State of U.P.

(Ajai Kumar Srivastava-I, J.) (Rajesh Singh Chauhan, J.)

Order Date :- 03.11.2023

cks/-