

A.F.R.

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

Neutral Citation No. - 2024:AHC-LKO:15852-DB

Reserved on :- 22.11.2023
Pronounced on :- 22.02.2024

Court No. - 9

Case :- CRIMINAL APPEAL No. - 2197 of 2017

Appellant :- Ram Chandra

Respondent :- State of U.P.

Counsel for Appellant :- Surendra Kumar, Nisha
Srivastava

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

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

1. Heard Ms. Nisha Srivastava, learned counsel for the appellant, Sri Rajdeep Singh, learned A.G.A. for the State and perused entire record.

2. Under challenge in this criminal appeal is the impugned judgment and order dated 30.11.2017 passed by the learned Additional Sessions Judge/ Special Judge, Essential Commodities Act, Barabanki in Sessions Trial No.269 of 2015 titled as State of U.P. vs. Ram Chandra arising out of Crime No.104 of 2015, under Sections 302 and 201 of the Indian Penal Code¹, Police Station

¹ hereinafter referred to as "I.P.C."

Haidergarh, District Barabanki whereby the appellant, Ram Chandra has been convicted and sentenced to undergo life imprisonment with a fine of Rs.25,000/- for the offence under Section 302 I.P.C. and in default of payment of fine, he has further been directed to undergo one year's additional rigorous imprisonment. However, he has been acquitted of charge under Section 201 I.P.C.

3. The case of the prosecution in nutshell is that a written report was submitted by the first informant, Poonam Kumari at Police Station Haiderganj, District Barabanki stating therein that on 14.05.2015, the first informant along with her husband, Premchandra was returning to their village from her brother-in law's house by a D.C.M. When they alighted from D.C.M. at about 09:00 PM near their Village, Narauli, a person, whom they could not recognize, started staring at the first informant and thereafter, he pounced upon the first informant and her husband. When the husband of the first informant tried to defend his wife/ first informant, the unknown person grabbed her husband with an intention to kill him and dragged him into a nearby pond and tried to strangle the first informant's husband. When the first informant raised alarm, many villagers reached the place of occurrence. The villagers saved her husband and also apprehended that person. The first informant's husband, being in a serious condition, was taken to the Government Hospital, Haidergarh, where her husband was declared dead. The first informant later

came to know the name of the accused/ murderer of her husband, who is the present accused/ appellant herein.

4. The inquest proceeding started on 15.05.2015 at 06:30 AM and got concluded on 15.05.2015 at 07:30 AM. The inquest report has been duly proved by P.W.-4, Batjor Singh as Ex. Ka-2.

5. According to postmortem report of the deceased, Ex. Ka-10, which has been proved by P.W.-6, Dr. Saroj Kumar, the cause of death of the deceased is reported to be asphyxia as a result of antemortem drowning.

6. On the basis of aforesaid written report, Ex. Ka-1 submitted by the first informant, Poonam Kumari, the first information report, Ex. Ka-8 came to be lodged against the appellant on 14.05.2015 at 10:30 PM for the offence under Section 302 I.P.C.

7. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure². He visited the place of occurrence and prepared a site plan, Ex. Ka-11 thereof.

8. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet, Ex. Ka-12 against the accused/ appellant for the offences under Sections 302 and 201 I.P.C.

² hereinafter referred to as "Cr.P.C."

9. Charges for the offences under Sections 302 and 201 I.P.C. were framed against the present accused/ appellant, who denied the charges and claimed to be tried.

10. In order to bring home guilt of the accused/ appellant, the prosecution has examined Poonam Kumari, who is the first informant, as PW-1, Smt. Tapeshwari Mishra as PW-2, Ms. Khushbu as PW-3, S.I. Batjor Singh as PW-4, Head Constable Ramrudra Tiwari, who is the chik writer, as PW-5, Dr. Saroj Kumar as PW-6 and the Investigating Officer, Inspector Chandrashekhar Singh as PW-7.

11. The appellant in his statement recorded under Section 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.

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

13. The learned trial court, after appreciating the evidence available on record adduced by the prosecution, convicted and sentenced the accused/ appellant as stated herein above.

14. Aggrieved by the impugned judgment and order dated 30.11.2017, the accused/ appellant has preferred the instant criminal appeal.

15. 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, therefore, the same cannot be sustained.

16. Her further submission is that the prosecution story is unbelievable. The prosecution has been unable to prove that the incident occurred at the place, which has been shown in the site plan, Ex. Ka-11. The prosecution has not brought forth true prosecution story. The appellant has been falsely implicated on the basis of false and fabricated facts. The prosecution witnesses did not prove and corroborate the prosecution case. The statements of witnesses of fact have not been considered in their right perspective. The appellant came to be convicted by the impugned judgment and order dated 30.11.2017, which is not based on due analysis of evidence available before the learned trial court. She has also contended that the learned trial court failed to appreciate the fact that there were major contradictions in the testimony of P.W.-1, Poonam Kumari, which renders her testimony wholly unreliable.

17. Learned counsel for the appellant has, thus, prayed to set aside the impugned judgment and order dated 30.11.2017 and to acquit the appellant accordingly.

18. 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 30.11.2017, which is well discussed and reasoned. The appellant was named in the first information report. He has also contended that minor contradictions in the statements of the prosecution witnesses are very natural having regard to the fact that they come from rural background, therefore, any minor contradiction in their testimonies cannot be stressed too far. Accordingly, interference by this Court is neither warranted nor is justified. He, accordingly, prays for dismissal of the instant criminal appeal.

19. At the outset, it is relevant to mention that S.I. Batjor Singh has been examined as P.W.-4, who has proved the *panchayatnama* as Ex. Ka-2 and letter to CMO as Ex. Ka-3. This witness has also proved the letter to R.I. as Ex. Ka-4 and photo of the corpse as Ex. Ka-5. He has also proved challan of the deceased as Ext. Ka-6 and specimen seal as Ext. Ka-7. Head Constable Ramrudra Tiwari has been examined as P.W.-5, who has proved the first informant report as Ext. Ka-8. He has also proved G.D. as Ext. Ka-9. Dr. Saroj Kumar has been examined as P.W.-6, who has conducted the postmortem of the deceased and he has reported the cause of death of the deceased to be forceful drowning. He has proved the postmortem report of the deceased as Ex. Ka-10. The Investigating Officer, Inspector Chandrashekhar Singh has been examined as P.W.-7. He has stated that

the *panchayatnama* proceedings were completed under his supervision by P.W.-4, S.I. Batjor Singh. He has proved the site plan as Ext. Ka-11 and the charge sheet as Ex. Ka-12.

20. Having heard the learned counsel for the appellant, learned A.G.A. for the State and upon perusal of record, it transpires that the first informant, Poonam Kumari, wife of the deceased, has been examined as P.W.-1. She has proved the written report as Ex. Ka-1. According to the written report, Ex. Ka-1, on 14.05.2015, she was returning to her home from the house of her brother-in-law (*jeth*), Lallan from Lucknow. They came to Haidergarh and thereafter, they boarded a DCM for her village. At about 09:00 PM, they alighted from DCM. When they were about to pay the fare, the appellant rushed towards the first informant to grab her. Her husband/ deceased, Prem Chandra intervened. Whereupon the appellant caught hold of the deceased by his neck. Thereafter, the appellant while pressing the neck of her husband, the deceased, brought him down in a nearby pond. This witness made hue and cry, which led to other persons to rush to the spot. The appellant was apprehended on the spot and her husband was taken to Haidergarh District Hospital where he was declared dead. P.W.-2, Smt. Tapeshwari Mishra, in her testimony, has stated that on the date of incident, she, upon hearing of screams, rushed to the spot. She was carrying a wooden stick (*danda*) and a torch with her. She saw that the appellant had caught hold of

deceased's neck and had pounced upon the deceased. The other persons of the vicinity also came to the spot. The man, who had pressed the neck of the deceased, revealed his name as Ram Chandra Rawat R/o Alpi ka Purwa, Police Station Subeha, District Barabanki.

21. A careful perusal of testimony of P.W.-2, Smt. Tapeshwari Mishra reveals that she has very categorically stated that on the date of incident, upon hearing screams, she along with wife of Ram Kumar only had reached at the spot. No other persons had reached there. She has also stated that it was a dark night and there was no source of light. She has also stated the fact that the place, where the deceased, Prem Chandra allegedly drowned because of the appellant pressing his neck in the water, in fact, had no water there. P.W.-3, Ms. Khushbu is a child witness, who has also stated to have seen the incident and has stated that on 14.05.2019 at about 09:00 PM, she also heard screams and when she reached at the spot, she saw that his uncle's neck was being pressed by a man, who, on being asked, revealed his name as Ram Chandra R/o Alpi ka Purwa.

22. If we scrutinize the testimony of P.W.-6, Dr. Saroj Kumar, we find that he had conducted the postmortem of the deceased and has proved the postmortem report as Ex. Ka-10. According to postmortem report, Ex. Ka-10 of the deceased, the cause of death of the deceased is reported to be

asphyxia as a result of ante-mortem drowning. If we peruse the site plan, Ex. Ka-11, we find that the place, where according to prosecution story, the appellant killed the deceased by pressing him in a water body, is not a pond or a regular water body. The site plan does not reveal as to how deep water was there at place 'C' in the site plan, Ex. Ka-11 where the deceased, Prem Chandra was done to death by pressing his neck into water. It needs to be stated that death by drowning could occur only when it is established that the place, where the deceased, Prem Chandra is said to have been killed by drowning, had sufficient water for doing so.

23. We have been able to notice that P.W.-1, Poonam Kumari has stated, in her testimony, that while her husband, the deceased, was done to death, he was wearing a black pant, black shirt and a vest. P.W.-2, Smt. Tapeshwari Mishra has also stated that the deceased was wearing only an underwear. She has stated the fact that she had taken off shirt, pant and vest of the deceased at the place of occurrence for the first time in the court during trial, which appears to us as an effort to improve the prosecution story to lend support to prosecution's case. Even P.W.-3, Ms. Khushbu, who is a child witness, has stated that the deceased had put on a pant and shirt when he left his home. However, a perusal of postmortem report, Ex. Ka-10 reveals that the deceased was wearing only an underwear. It is not the case of the prosecution that the

appellant had disrobed the deceased while they were in scuffle.

24. In this regard, we have carefully perused the entire record and are constrained to say that the shirt, pant and vest, which were allegedly worn by the deceased once he left the home, were neither recovered by the Investigating Officer near the alleged place of occurrence nor the same were handed over by P.W.-2, Smt. Tapeshwari Mishra to the Investigating Officer, therefore, it does not rule out possibility of the fact that the prosecution has not come up with the true chronology of the incident; rather the prosecution has tried to shield some facts.

25. We say so because in want of any evidence to suggest as to what was the depth of water at point 'C' in the site plan, Ex. Ka-11, which is shown as the place where the deceased was done to death by the appellant by pressing his neck into water, it is difficult to comprehend as to how and in what manner, the deceased was killed. The fact that the deceased was found wearing only underwear also casts doubt on the prosecution story. Admittedly, on the date of alleged incident, it was a dark night. The time of occurrence is stated to be about 09:00 PM in the night. P.W.-1, Poonam Kumari, who is stated to be an eye witness, has categorically stated in her testimony that she was informed by the police personnel that the appellant has been made an accused, only thereafter, she put her

signature on the written report, Ex. Ka-1. She has also stated that the written report was scribed by the police personnel and only thereafter, the police personnel obtained her signature on it. This clearly shows that the written report was not an outcome of her own volition. She has very categorically stated that she does not know whether real culprit was apprehended on the spot or some other person. It is not out of place to mention that it is the prosecution's own case that the first informant was not acquainted with the appellant and she did not know his name prior to the date of incident. In want of depth of water at point 'C' as shown in the site plan, Ex. Ka-11, it is difficult to determine as to whether there was sufficient water where the deceased could have been done to death in a manner as shown in the postmortem report. We say so because in a given case, such lapse of not mentioning depth of water at place 'C' would have been considered as such a trivial lapse on the part of the Investigating Officer, which could not have lent any benefit to the appellant. However, as aforesaid fact goes to the very root of the matter and it makes the entire prosecution story improbable, therefore, it cannot also be ruled out that the prosecution did not disclose the real genesis and correct situs of the place of occurrence. According to written report, Ex. Ka-1, when the first informant, P.W.-1, Poonam Kumari raised alarm, many villagers of the vicinity had reached the spot and according to recital made in the written report, Ex. Ka-1, they apprehended the appellant. However, no such witness has been

examined by the prosecution. Therefore, we are of the considered view that the prosecution has miserably failed to establish the fact that on 14.05.2015, the appellant, who belonged to a different village and, who, according to prosecution's own story, had no prior enmity with the deceased or the first informant, P.W.-1, Smt. Poonam Kumari, had killed the deceased only because he was apprehended near the alleged place of occurrence.

26. Hon'ble the Supreme Court in **Bhagwan Sahai and another vs. State of Rajasthan**³ in paragraph No.8 has held as under :-

"8.The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-by in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case."

³ (2016) 13 SCC 171

27. We are oblivious of the fact that in the case at hand, a young man has died, but the fact remains that it is the duty of prosecution to prove its case against the accused-appellant beyond reasonable doubt. Suspicion, howsoever grave cannot take place of a proof. In this regard, Hon’ble the Supreme Court in **Upendra Pradhan vs. State of Orissa**⁴ in paragraph No.14 has held as under:-

"14. Taking the first question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognised as a human right by this Court. In Narendra Singh v. State of M.P., [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893], this Court has recognised presumption of innocence as a human right and has gone on to say that: (SCC pp. 708 & 709, paras 30-31 & 33)

"30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

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XXXX XXXX XXXX XXXX"

(emphasis supplied by us)

28. Thus, in view of what has been discussed above, we are constrained to hold that the learned trial court, while appreciating evidence adduced by the prosecution to bring home guilt of the appellant, lost sight of aforesaid facts and circumstances of this case. Therefore, we find the impugned judgment and order dated 30.11.2017 passed by the learned Additional Sessions Judge/ Special Judge, Essential Commodities Act, Barabanki unsustainable. We are of the considered view that the appellant deserves to be given benefit of doubt.

29. The upshot of aforesaid discussion is that the impugned judgment and order dated 30.11.2017 whereby the appellant, Ram Chandra came to be convicted for the offence under Section 302 I.P.C., is not sustainable and deserves to be set aside, which is, accordingly, set aside. The appellant is acquitted of charge under Section 302 I.P.C. Consequently, the present criminal appeal is **allowed**.

30. The accused/ appellant, Ram Chandra is in jail. Let the accused/ appellant be released from jail forthwith, if he is not wanted in any other case.

31. The appellant is directed to file a personal bond and two sureties in the like amount to the satisfaction of the court concerned in compliance of Section 437-A Cr.P.C. within eight weeks from today.

32. Let the record of trial court along with a copy of this order be transmitted forthwith to the learned trial court concerned for necessary information and compliance.

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

Order Date :- 22.02.2024
cks/-