

Neutral Citation No. - 2025:AHC: 40070-DB

Court No. 43

Case :- CRIMINAL APPEAL No. - 1995 of 1986

Appellant :- Ram Sewak And Others

Respondent :- State

Counsel for Appellant :- V.K. Saxena

Counsel for Respondent :- A.G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Mohd. Azhar Husain Idrisi,J.

(Per: Hon'ble Vivek Kumar Birla, J.)

1. On 29.1.2024 following order was passed:

“As per the report of Chief Judicial Magistrate, Jalaun at Orai, dated 21.9.2019, appellant Nos.1 to 4 are absconding for last 25 years. Appellant No.5, Har Kishan, has died.

Accordingly, the appeal on behalf of appellant No.5, Har Kishan is dismissed as abated.

Let a report be called from CJM, Jalaun at Orai, regarding, appellant Nos.1 to 4, as to what steps has been taken against their sureties.

List this case again on 20.2.2024, along with office report.”

2. Thereafter, on 10.2.2025 following order was passed:

“1. List revised. No one is present for the appellants to press this appeal.

2. Perused the office report dated 05.11.2024 which is based on the report submitted by the Chief Judicial Magistrate, Jalaun dated 24.09.2024, according to which the appellant no.1 Ram Sewak, appellant no.3 Badlu and appellant no.4 Lala Ram have died.

3. Accordingly appeal stands abated in respect of appellant no.1 Ram Sewak, appellant no.3 Badlu and appellant no.4 Lala Ram.

4. Appeal has already been abated in respect of appellant no.5 Har Kishan vide order dated 29.1.2024.

5. In so far as the appellant no.2 Ram Singh is concerned, his wife has stated that he has not returned home for the last 7 years.

6. In view of that, bail granted to the appellant no.2 Ram Singh is cancelled and the bond is forfeited.

7. The office is directed to send the details of sureties with photocopy of the bail bonds indicating the details of the sureties of the appellant no.2 Ram Singh to the concerned Chief Judicial Magistrate forthwith so that appropriate action be taken against the sureties under Section 446 Cr.P.C.

8. The Chief Judicial Magistrate concerned is directed to proceed in accordance with Section 446 Cr.P.C. against the sureties and submit a report in this regard to this Court within four weeks.

9. List on 12.03.2025 along with the fresh office report.”

3. The aforesaid order clearly reflects that appeal is surviving only in respect of appellant no. 2-Ram Singh s/o Daya Ram whereas the appeal stood abated in respect of appellant no. 1-Ram Sewak s/o Sri Pushu, appellant no. 3-Badlu s/o Sri Devi, appellant no. 4-Lala Ram s/o Sri Khanju and appellant no. 5-Har Kishan s/o Sri Chirman.

4. By the order dated 10.2.2025, the bail granted to the appellant no. 2-Ram Singh was cancelled and the bonds were forfeited as he is absconding. Office was directed to send the details of sureties to the concerned Chief Judicial Magistrate forthwith so that appropriate action be taken against the sureties under Section 446 Cr.P.C.

5. Perusal of the office report dated 11.3.2025 based on the report of the Chief Judicial Magistrate, Jalaun at Orai dated 11.3.2025 reflects that sureties of Ram Singh, namely, Ganga Prasad s/o Paramlal and Radhey Babu s/o Asha Ram were proceeded against, however, the report reflects that Ganga Prasad is dead and the statement of his son Ved Prakash has been recorded, apart from the statement of village Pradhan and Sub Inspector of P.S. Kotwali, District Jalaun. Insofar as the other surety Radhey

Babu s/o Asha Ram is concerned, it has been reported that he died on 17.3.2017 and the statement of three persons have been recorded. It is, therefore, clear that the sole surviving appellant no. 2-Ram Singh could not be proceeded against and even the sureties are dead. It was earlier reported that for the last 8 years, surviving appellant no. 2-Ram Singh has left the village as per his wife Sujata about 7 years back and, therefore, it can be safely presumed that he is absconding and is not traceable.

6. Present appeal is of the year 1986. The incident is dated 6.3.1985 and in view of the age given in the statement of the surviving accused Ram Singh under Section 313 CrPC, if alive, at present he would be around 71 years of age. In such view of the matter, we propose to decide the appeal on merits.

7. In **Surya Baksh Singh vs. State of Uttar Pradesh**, (2014) 14 SCC 222, the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both, the appellant or his counsel/lawyer are absent and that the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court. In paragraph 26 of the said judgement, it was held that it is always not essential for the High Court to appoint Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:

"24. *It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to*

immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:

"19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;

19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.

19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.

25.....

26. *Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers Mohd. Sukur Ali*

v. State of Assam (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh vs. State of U.P. (1996) 4 SCC 720. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error."

(Emphasis supplied)

8. We, therefore, proceed to consider the appeal on merits with the help of Sri Ajay Kumar Sharma, learned AGA.

9. This criminal appeal has been preferred assailing the judgement and order dated 4.7.1986 passed by the Sessions Judge, Jalaun at Orai in Sessions Trial No. 87 of 1985 convicting all the appellants under Section 148 IPC and sentencing them one and half years R.I. and further convicting all the appellants under Section 302 read with Section 149 IPC and sentencing them life imprisonment.

10. Prosecution story, in brief is that a day prior to the incident at about 2 pm one Dhara Singh, nephew of accused Badlu and Balbir, nephew of deceased Bhagirah had quarreled and there was 'Marpit' between them. Both accused Badlu and deceased Bhagirath had reached the place of the said 'Marpit' and had intervened by separating both the boys. Badlu, however, was dissatisfied and he had threatened Bhagirath. Due to intervention of the villagers

present there, no untoward incident could take place. However, on 6.3.1985 at about 10 pm when Bhagirath was going to the shop of Mangali, he was accosted by all the five miscreants near the house of Ram Singh of his village. It is alleged that all the five accused persons were armed with 'Kulharis' and they surrounded Bhagirah. Accused Badlu was alleged to have challenged and exhorted to kill Bhagirath. Thereupon all the accused started assaulting Bhagirath. On the hue and cry of Bhagirah, witnesses Kunji Lal, Karhore, Budhu and the first informant Pancham, brother of the deceased reached the place of occurrence. They were alleged to have seen the accused assaulting the deceased and running away after causing serious injuries to Bhagirath. Pancham arranged for a tractor and proceeded towards police station for lodging the first information report along with his injured brother. On the way to police station Bhagirah died. His dead body was taken to the police station. On 7.3.1985 at 1 am Pancham lodged written report (Ext. Ka-1), the distance of the police station being 8 kilometers from the place of occurrence.

11. On the basis of written report of the complainant, a first information report was lodged against the accused persons under Sections 302, 147, 148, 149 IPC. On being committed to the Court of Sessions, the accused were charged as above. The accused denied the charges framed against them and claimed to be tried.

12. In order to establish the prosecution case, PW-1 Kunji Lal, PW-2 Pancham and PW-3 Karhore are witnesses of fact. PW-4 Dr. H.D. Verma held autopsy on the dead body of Bhagirah. PW-5 Constable Narain Das was constable moharrir who had scribed the check report. PW-6 S.I. G.C. Kureel was the investigating Officer. In addition to this,

the prosecution produced certain documents, which were exhibited during the trial as under:

(i) Written report as Ext. Ka-1, (ii) blood-stained and plain earth as Exts. 5 and 6, (iii) blood-stained 'safi' as Ext. 7, (iii) Inquest report as Ext. Ka-9 and 10, (iv) Check report as Ext. Ka-12, (v) GD entry as Ext. Ka-13, Site plan as Ext. Ka-15, (vi) Chargesheet as Ext. Ka-16, (vii) reports of chemical examiner and Serologist as Exts. Ka-16 and Ka-17.

13. Insofar as the date and time of the occurrence is concerned, it has been stated that the incident had taken place about 10 PM on 6.3.1985. It was full moon night as the *Holika Dahan* was being celebrated on that date. The first information report was lodged at 1 AM on 7.3.1985. The distance of the police station is about 8 kilometers. It has come on record that the deceased was attacked by all the three accused persons by surrounding him and all of them have caused sharpened edged blow of axe upon the deceased on vital parts. The tractor was arranged and he was carried to police station but on way he died. It has also come on record that the statement of witnesses under Section 161 CrPC were recorded in the night itself. PW-4 Dr. H.P. Verma who had conducted the post-mortem on 7.3.1985 at about 3 pm has stated that the death could have been caused at 10 pm on 6.3.1985, therefore, the medical evidence also corroborates the time and date of the occurrence. Insofar as the place is concerned, it is alleged that the incident had taken place at Chauraha near the house of Gajadhar and all the three eyewitnesses have categorically stated that the incident took place near the house of Gajadhar and the site plan prepared promptly by the Investigating Officer also indicates the position and

therefore, PW-1 Kunji Lal, PW-2 Pancham and PW-3 Karhore have categorically stated that the incident had taken place near the house of Gajadhar. PW-6 SI G.C. Kureel (Investigating Officer) has recorded the statement of these witnesses under Section 161 CrPC just after lodging the first information report before he visited the place of occurrence. No different version in respect of place of occurrence could be indicated by the defence or the statement so made and certified by the Investigating Officer by preparing the site plan could be dislodged by the defence. The blood-stained soil and blood-stained *Safi* was also recovered from the place of incident. All such exhibits were sent for medical examination and there is a categorical report of chemical examination to the effect that articles were stained with human blood of B-group. The recovery of blood-stained soil from the spot towards the south of the house of Gajadhar was proved by the PW-6 Investigating Officer. We, therefore, find that the testimony of all the witnesses in respect of place of occurrence is, thus, consistent and is supported by evidence of PW-6 as well as circumstantial evidence in the shape of recovery of blood-stained soil and blood-stained *Safi*. We, therefore, find that the place of occurrence is also proved beyond any shadow of doubt.

14. It is also pertinent to note that Pancham has appeared as PW-2 whose house was in the vicinity of place of occurrence and he has also proved the place of occurrence and, therefore, he is a natural eyewitness present on the spot whose presence and testimony could not be dislodged by the defence. It is a case of direct evidence where three witnesses are the eyewitnesses. The motive, therefore, takes back stage in the present case,

however, it has come on record that some dispute had taken place amongst the children which was settled but Badlu was not satisfied with the settlement and compromise and had threatened that he would take revenge of the same. It has come in the evidence that Badlu has, in fact, played the role of exhortation and on his calling all the five accused persons armed with axe have surrounded the deceased Bhagirath and caused blow. The post-mortem report mentioned following ante-mortem injuries on the dead body:

"1. Incised wound 7 cm x 1 cm x skin deep on parietal bone of the scalp on right side.

2. Contusion 3/4 cm x 1/2 cm on the frontal bone of the head on right side.

3. Incised wound 8 cm x 2 cm x bone deep on occipital bone of the scalp.

4. Abrasion 2 cm x 1 1/2 cm on the back of the left elbow joint.

5. Abrasion 2 cm x 1/4 cm on the back of the chest on left side.

6. Lacerated wound 5 cm x 2 cm x muscle deep on the parietal bone on right side.

7. Incised wound 4 cm x 1 cm x muscle deep on the occipital bone and parietal bone joint on the scalp.

8. Incised wound 5 cm x 1/4 cm x muscle deep on the back of the neck.

9. Abrasion 1 cm x 1/2 cm outer scapular region on the back of chest on right side.

10. Incised wound 3 cm x 1/2 cm x muscle deep in between grip of the middle finger and index finger on palmar aspect of the left palm.

11. Abrasion 3 cm x 1/4 cm on the lower border of the right knee joint.

12. Lacerated wound 3 cm x 1/2 cm on the lower one-third of the shaft of right tibia bone.

13. Lacerated wound 5 cm x 1/2 cm x muscle deep on the shaft of right tibia bone which is about 1 cm away from injury no.2.

14. Lacerated wound 3 cm x 1/2 cm x muscle deep on the lateral malleolus of the right ankle joint.

15. Abrasion 2 cm x 1 cm on the outer middle of the left ankle joint.

16. Abrasion 4 cm x 1 cm on the left ankle joint which is about 1/2cm away from injury no.15.

17. Abrasion 4 cm x 1 cm on the lower border of the left knee joint just adjacent to the left tibia.

18. Abrasion 7 cm x 1cm on the shaft of the left tibia bone 2 cm away from injury no.17.”

15. The post-mortem report duly proved by PW-4 Dr. H.D. Verma clearly indicates that the deceased had suffered ante-mortem injuries, out of which injuries no. 1, 3, 7, 8 and 10, i.e., the incised wounds were sufficient to cause death. He had further opined that injuries no. 2, 6, 12, 13 and 14 could have been caused by handle of axe. The contusion and abrasion could have been caused on falling on the ground. He had clearly opined that that could have been caused at about 11 pm on 6.3.1985. He had categorically proved the injuries caused to the deceased and has clearly stated that injuries could have been caused because of the sharpened edged weapon like axe. The medical evidence also corroborates the injuries suffered by the deceased Bhagirath. The defence, though sought to dispute the use of axe in causing injuries, however, could not dislodge the prosecution version that the same could have been caused by use of heavy sharpened edged weapon like axes. We, therefore, find that the death was caused by use of sharpened edged weapon like axe and there was a clear eyewitness account that all the five accused persons have used axe in causing the injuries. Certain injuries were also on palm, head, knees and ankles etc. The minor injury must have been caused to the deceased while he was

trying to save himself from blows given to him. Therefore, the eyewitness account is fully corroborated with the medical evidence available on record.

16. Insofar as the question as to why accused persons could have been falsely implicated is concerned, neither the prosecution nor the defence alleged existence of any previous enmity although it was alleged that Badlu was still not satisfied with the compromise that had taken place after some scuffle amongst the children and therefore, he was annoyed and the incident had taken place because of that.

17. Be that as it may, the witness the informant, PW-2 Pancham is the real brother of the deceased Bhagirath, who had lodged the prompt FIR and had taken the deceased to the police station is the related witness whereas the PW-1 Kunji Lal is the eyewitness and has clearly stated that he was present on the spot in front of door of his own residence. His statement was recorded immediately under Section 161 CrPC on the same night and therefore, his testimony cannot be brushed aside lightly. Nothing came out from his cross-examination even though he was recalled. PW-1 had categorically stated that when he saw the incident, when he was talking with PW-3 Karhore. PW-3 Karhore is also eyewitness of the incident. Their statements were promptly recorded immediately after the incident by the Investigating Officer and there is no discrepancy in their statement.

18. Therefore, the date, time and place and involvement of the accused persons and injuries caused to the deceased, are duly corroborated by the medical examination and the investigation conducted by the

Investigating Officer promptly. We have recorded this finding after close scrutiny of the entire evidence on record. We have also gone through the discussion and the reasoning given by the trial Court while recording the finding that all the accused persons are guilty of committing the offence under Section 148 IPC and 302 IPC read with 149 IPC. We find that each and every evidence has been considered in detail by the learned Sessions Judge and the findings recorded by him are also supported by the judgement rendered by Hon'ble Apex Court on the issues involved in the present case.

19. Present appeal lacks merit and is accordingly **dismissed**. The conviction of surviving appellant Ram Singh is confirmed.

20. The bail granted to the surviving appellant Ram Singh has already been cancelled and his bail bonds has also been forfeited.

21. Lower court record be sent to the concerned Court.

22. Let a copy of this order be communicated to the lower Court concerned for compliance by the Registrar (Compliance) at the earliest.

Order Date :- 12.3.2025
Abhishek