

Neutral Citation No. - 2025:AHC:82998-DB

Case :- CRIMINAL APPEAL No. - 2467 of 1983

Appellant :- Bashir Khan

Respondent :- State of U.P.

Counsel for Appellant :- P.K. Tewari, R.K. Srivastava, Saurabh Basu, Sharad Kumar Srivastava A

Counsel for Respondent :- D.G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Jitendra Kumar Sinha, J.

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

1. On 10.5.2024, the following order was passed:

"1. No one has appeared for the appellant even in the revised call.

2. The Chief Judicial Magistrate, Jhansi has not been able to trace out the appellant.

3. We, however, consider it appropriate that the appeal be argued.

4. Since no one has appeared, we appoint Sri Saurabh Basu, Advocate as an Amicus Curiae in this case.

5. List this case on 21.5.2024. Office to provide the paper-book to Sri Saurabh Basu, Advocate.

6. When the case is listed next, the name of Sri Saurabh Basu, Advocate be also shown as Amicus Curiae in the case."

2. We, therefore, proceed to consider the case with the help of Sri Saurabh Basu, learned *Amicus Curiae* and Sri O.P. Dwivedi, learned AGA for the State.

3. This criminal appeal has been preferred assailing the judgement and order dated 16.9.1983 passed by Special Judge (E.C. Act) & Additional Sessions Judge, Jhansi in Sessions Trial No. 74 of 1980 convicting and sentencing the

appellant under sections 394/302/412 IPC to undergo imprisonment for life and 4 years rigorous imprisonment under sections 394 and 411 IPC directing all the sentences to run concurrently.

4. The prosecution case in brief is that accused Abdul Sattar was a wholesale dealer of lemon and ginger and appellant Bashir Khan was also a dealer of the same. In the evening of 24.4.1980, informant Buddhu alias Washir Khan was supervising the construction work of Harijan colony near the temple of Sakhi Ke Hanuman when, at about 12 noon, he heard the cries '*bachao-bachao*' from the direction of the well of Matadeen. On hearing the said cries, he along with Om Prakash son of Govind Das Kori, Babu Lal son of Deshraj Kori and Hari Ram son of Bhure Parhar went towards that side and saw that the accused was snatching one bag from the deceased Abdul Sattar. When Abdul Sattar did not give the bag, the accused Bashir Khan gave knife blows to him on which, he left the bag and ran towards the khaliyan of Matadeen. The accused after snatching the bag from Abdul Sattar ran towards Medical Collage. We chased him and apprehended him near the boundary wall of Medical College. On inquiry, he told his name as Bashir khan son of Gafoör Khan resident of village Piprai Gaon, District Guna and told that the bag belonged to Abdul Sattar and he has snatched the same from him after giving him knife blows. He stated that there was some cash inside the bag and that he and Abdul Sattar used to supply lemon to the same agent at Lucknow and they arrived at Jhansi together in the morning. On the pretext of taking bath from clean water of a well, he had asked Abdul Sattar to go to Laxmi Tal for a bath. He and Bashir Khan came to Laxmi Tal where they found that the water was dirty,

whereupon, Bashir Khan said that they should have bath by fresh water from a well. on this pretext, he brought him there and snatched his bag containing money and clothes after inflicting knife-blows upon him. Buddu and others took Abdul Sattar to the Medical college in the bullock cart of Matadeen where he expired on the way. They carried the dead body of Abdul Sattar to Medical College, where they kept it and Buddhu scribed the report Ex.Ka-1.

5. On the basis of written report of the complainant, a first information report was lodged on 24.4.1980.

6. In order to establish the prosecution case, 6 witnesses were examined, namely, Buddu alias Bashir as PW1, Om Orakash as PW2, Dr. P.C. Gupta as PW3, Babu Lal as PW4, HC Dev Dutt Tiwari as PW5 and Nathu Singh as PW6.

7. In addition to above, the prosecution produced certain documents, which were exhibited during the trial as under:

(i) FIR Ext. Ka-7; (ii) Written report Ext. Ka-1; (iii) Application of Washir Khan Ex. C-1 (iv) Recovery Memo of bag and clothes Ext. Ka-2; (v) Recovery Memo of search Ext. Ka-3; (vi) Recovery Memo of sleeper and bedsheet Ext. Ka-4; (vii) Recovery Memo of blood stained and plain earth Ext. Ka-5; (viii) Recovery Memo of ring and dead body Ex. Ka-12; (ix) Postmortem report Ext. Ka-12; (x) FSL report Exs. Ka-23 and Ka-24; (xi) *Panchayatnama* Ex. Ka-11; (xii) Chargesheet Ex. Ka-18; (xiii) Site plan with index Ex. Ka-17.

8. We have heard Sri Saurbh Basu, learned *Amicus Curiae* for the appellant and Sri Om Prakash Dwivedi, learned A.G.A. for the State respondents.

9. The crux of submission of learned *Amicus Curiae* is that

PW1 Buddu, the informant eye witness was not present on the spot; the injury and manner of incident does not support the prosecution version; the recovered bag Ex. Ka-2 contains material belonging to the accused as well, including cash, therefore, it is not possible that the accused himself would be involved in causing injury to the deceased and taking away the bag wherein his belongings were also found. In support of his argument, he has drawn the attention to the statement of PW1. He further pointed out that PW2 Om Prakash, the alleged eye witness turned hostile and no reliance can be placed on his testimony. He further submitted that it was alleged that there were several other persons on the spot, however, no other witness was produced. He further pointed out that in fact PW1, the informant and PW2 along with other persons were themselves committing the offence. However, when they were caught, they lodged the FIR against the accused herein to save themselves and became witness of incident. By drawing attention to the manner in which the injuries were caused and the medical report, he submitted that the injuries could not have been inflicted on the deceased in the manner as stated.

10. *Per contra*, learned A.G.A. submitted that it is a case where prompt FIR was lodged; the accused was arrested with knife on the spot and was taken to the police station; there was recovery of knife from the possession of the accused; the recovery of bag containing cash also contained cheques in favour of father of the deceased, ledger (account book) belonging to the accounts of the deceased, therefore, it is proved that the bag belonged to the deceased, hence, motive to commit crime is also proved; the FSL report clearly reflects that there was human blood on the clothes and blood stained soil so recovered. He submitted that it is a case of eye witness

accounts of independent witnesses. He pointed out that PW1 is independent eye witness. He submits that even PW2 Om Prakash turned hostile when he was recalled otherwise he remained intact and in any case, still his statement is valuable for corroboration of the evidence. Learned AGA has further submitted that PW3 Dr. P.C. Gupta who has conducted the postmortem has proved the ante-mortem injuries; PW4 Babu Lal whose name also figured in the FIR has also narrated the incident precisely has also proved the incident. Submission, therefore, is that the judgment of conviction of the appellant herein warrants no interference.

11. We have considered the rival submissions and perused the record.

12. We find that the blood stained knife was recovered from the possession of the accused. We further find that search of the accused was also undertaken and a sum of Rs. 160/- was found in his pocket; one small diary and two ledgers (account books) were also found from his possession. This recovery reflects that the bag contains ledger and cheque-books and personal things like clothes etc. of the deceased Abdul Sattar. Slippers and one bed sheet belonging to the deceased were also recovered from the spot where he was found lying. Blood stained and plain soil were also collected from the spot. A sum of rupees 230/- was also recovered from the pocket of the pant which the deceased was wearing along with and one gold ring. The chemical examination report clearly reflected that the articles recovered including knife contained blood stains and there were huge patches of blood on the clothes of the deceased. The inquest report reflects that the report was lodged at 2:00 p.m. whereas the inquest was conducted at 3:15 p.m. on the same day at Medical College. The injuries

reflected in the inquest report corresponding to the ante-mortem injuries shown in the postmortem report duly verified by PW3 Dr. P.C. Gupta who has conducted the postmortem.

13. PW1 Buddu @ Washir Khan son of Chhote Khan, the eye witness, is an independent witness and it is nowhere reflected in his entire statement that he was related or interested witness in the present case which would be interested in conviction of the accused. At the initial stage, he had clearly stated that along with others he found that one person was stabbing the other. Subsequently, when he had caught the accused herein, he came to know about the names of the injured as well as of the accused. He had categorically stated that the deceased was not known to him and at the time when they had reached the spot, the injured was alive and has given his name as Abdul Sattar and the accused has made confession before him that he had committed the offence. He had verified the recovery of the bag and remained intact in his cross examination in so far as the incident of catching the accused person, taking him to the police station and recovery of knife and bag from his possession is concerned. No material contradiction could be highlighted.

14. In so far as his presence on the spot is concerned, learned *Amicus Curiae* has submitted that presence of PW1 on the spot is not proved and is seriously doubted. We find that PW1 had clearly proved his presence on the spot by stating that he was clerk of a contractor who was working in a nearby colony and at that time, around 25 to 30 labours were also working. He also remained intact in cross examination in so far as the place of occurrence is concerned. He stated that from the spot of stabbing and snatching the bag they could catch hold of the accused at a distance of about 300 yards. He

had categorically denied suggestions in respect of his absence from the spot. On the contrary, he had proved as to in what manner they chased the accused along with other persons and caught hold of him at some distance and recovery of bag from his possession which he was taking away while running. He in fact had also stated that accused Bashir Khan had made confession before them which can be treated as extra-judicial confession that he had stabbed the deceased. There is no doubt that he accepted that he had appeared as witness in three to four cases from the prosecution side, however, in one of the incident, he stated that he had killed one of the dacoits and, therefore, he was a natural witness in the aforesaid case. We are of the opinion that this fact by itself that he had appeared in two to three cases from the prosecution side would not prove that he was a key witness. In the present case, he remained intact on facts, coupled with the fact that PW2 Om Prakash and PW4 were also stated to be eye witnesses of the incident as narrated in the FIR itself. We, therefore, find that the manner in which such incident had taken place is proved and is also shown in the site plan as well in the same manner. We, therefore, do not find any reason to disbelieve his evidence. The other witnesses are formal in nature.

15. A bare glance over the statement of accused Bashir Khan recorded under section 313 Cr.P.C. would also clearly reflect that the deceased Abdul Sattar and the accused both were engaged in a common trade and they had left Lucknow together and at the time of incident they were together. In reply to question no.21 as to why the witnesses are deposing against him, he stated that they are associates of Washir Khan, the informant. In reply to question no. 21, as to what

else he has to say, he has narrated the entire incident as to how they have reached the spot and submitted that he saw the informant Washir Khan catching hold of the deceased Abdul Sattar when he was falling and two policemen and other persons reaching the spot. He stated that he accompanied the deceased to Medical College and from there to the hospital and, therefore, he had clearly admitted the fact that as to how he was with the prosecution witness although he is trying to turn the liability of the entire incident on the prosecution witness. He has admitted that he was having the bag with him which was later on taken by the investigating officer.

16. At page 100 of the paper book, in reply to question no.3 as to why he is being prosecuted, he had replied that he has enmity with Buddu i.e. the informant and PW1 herein. A glance over the aforesaid statement would clearly reflect that he has not disputed the fact that he was present with the informant and other prosecution witnesses and had accompanied them to Medical College and thereafter to the police station as well and that the bag was also recovered from him. It is pertinent to note that the accused Bashir Khan is resident of village Piprai, District Guna in the State of Madhya Pradesh whereas the incident had taken place in District Jhansi, State of U.P. in police station Nawabad and it has not been clarified at all as to why Buddu, the informant herein, who is resident of a different State and District is having enmity with the accused and except the bald statement that because of enmity he has been implicated, there is nothing on record to prove the enmity.

17. On re-appreciation of evidence in the present case, we find that there was a prompt FIR; there was spot arrest; recovery of blood stained knife and bag containing cash and personal belongings of the deceased, account books

belonging to the deceased and the accused as well from the possession of accused and the clothes of the deceased, knife and blood stained soil, all were having human blood as per FSL report. PW1 and PW4 are independent witnesses. In so far as PW2 is concerned, he is also independent witness and in his examination-in-chief recorded in the year 1980, he has narrated the story and the entire prosecution version precisely and he remained intact in his cross examination as well. However, he was recalled after three years when he turned hostile. The nature of injury and the ante-mortem injuries, the manner in which the injuries could have been caused, all were duly proved by PW3 Dr. P.C. Gupta. Nothing is available on record to prove the allegation of enmity between persons living in two different States in any case two different Districts. Therefore, we find that there is no substance in the arguments of learned *Amicus Curiae* and the appeal is devoid of merits.

18. At this stage, we have also gone through the trial court judgment and we find that the reasons given for recording of the judgment of conviction are cogent and sound and warrants no interference.

19. Accordingly, the appeal stands dismissed. The conviction of appellant Bashir Khan is confirmed.

20. Since the appellant Bashir Khan is on bail, his bail bonds are cancelled and sureties are discharged. He is directed to surrender before the court concerned within three weeks to undergo the punishments awarded.

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

22. Let a copy of this order be communicated by the Registrar (Compliance) to the Court concerned for compliance and to proceed in accordance with law in case the accused

fails to surrender.

23. Registrar General of this Court is also directed to pay an honorarium of Rs. 15,000/- to Sri Saurabh Basu, learned *Amicus Curiae* for rendering effective assistance in the matter.

Order Date :-19.05.2025

Madhurima