



2026:AHC:146373-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 236 of 1985

Babu Lal

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	Virendra Singh Chauhan, Dhiraj Srivastava, Deepak Kumar Pandey A/C, From Jail, H.N.Sharma, V.S.Chauhan
Counsel for Respondent(s)	:	A.G.A

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Sri D.P. Singh, learned Senior Counsel assisted by V.S. Chauhan, learned counsel for the appellant and Ms. Divya Ojha, learned AGA-I, for the State.

2. The present appeal has been filed by the sole appellant who is aggrieved by the judgment of the conviction dated 11.10.1984 passed by the learned Court of Session, in S.T. No.607 of 1984 (State Vs. Babu Lal Kachi). By the said judgment and order, the appellant was convicted for offence under Sections 302 and 323 IPC and sentenced to suffer rigorous imprisonment for life under Section 302 IPC and one year's rigorous imprisonment under Section 323 IPC.

3. Brief facts of the case are as follows:

4. The deceased Ganga and the accused Babu Lal are brothers. On 25.03.1984 at about 11:30 am, an oral report was given by PW-1 to the police, a summary of which reflects that on the date of the incident, the appellant Babu Lal who was armed with the Sabri (from description given by learned Senior Counsel for the appellant and learned AGA, it appears to be used for digging which is approximately one and half feet), came from behind and struck the deceased on his head at least three to four times. When she pleaded with him to stop, she was also attacked. PW-1 is the wife of the

deceased. She further says that her sister-in-law came there, interceded and removed the Sabri from the hands of the appellant (which is stated to be used for digging which is one and half feet), as so stated by the Investigating Officer in his deposition.

5. Learned Senior Counsel appearing on behalf of the appellant submits that during the course of the trial and thereafter during pendency of the appeal, the appellant may have completed approximately five years of sentence before he was enlarged on bail by this Court. Learned Senior Counsel for the appellant has put forth several arguments, firstly, stating that the entire case against the appellant is false as most material witness in this case who was Rani, sister of the deceased who is alleged to have interceded, snatched the Sabri from hands of the appellant and who gave the Sabri to the police, has never been examined as a witness. Therefore, the argument is that the best evidence in this case has been concealed by the prosecution which vitiates the trial itself.

6. The secondly, the learned Senior Counsel for the appellant submitted that no motive for the murder has been proved by the prosecution and what is stated to be motive which has come out in the deposition of PW-1 to the effect that a day before the incident, there was a sharing of moveable articles between the deceased and the appellant during which, the deceased requested the appellant to leave some articles for him also to which the appellant allegedly stated that he will not leave a single article for the deceased and his family and shall take everything. This, according to the learned counsel for the appellant, was too insignificant an instance in order to motivate the appellant to take the life of his own brother and, therefore, it should be held by this Court that the prosecution has not been able to prove the motive in this case.

7. The third argument put forth by learned Senior Counsel for the appellant is whether the death allegedly caused by the accused using an object which is not used as a dedicated weapon and was further used from the blunt side, would reflect that the accused had the intention to kill the deceased. He further submits that even if the prosecution case is taken in its entirety to be true and proved beyond reasonable doubt, the only offence for which the appellant could have been held guilty of and punished, was for an offence under Section 325 IPC (causing grievous hurt).

8. The last argument put forth by learned Senior Counsel for the appellant is that the prosecution has failed miserably to prove the intention beyond reasonable doubt. In this regard, it has been submitted that the intention has to be inferred from the sum totality of facts of a particular case. In this case, learned Senior Counsel for the appellant has argued that the offending weapon which was seized by the police is only one and half feet long in length and made of iron and not an article that is used as a weapon but something that finds use in agriculture.

9. Under the circumstances, learned Senior Counsel for the appellant submits that as the appellant did not reach the scene of occurrence and attack the deceased with a weapon which could only cause grievous hurt or death, then in such a situation, the Court must necessarily arrive at a finding that the prosecution has not been able to prove the intention.

10. Per contra, learned counsel for the State, on the other hand, has argued that though it is correct that Rani who otherwise a material witness, has not been examined by the prosecution, the case of the prosecution is not weakened as the rule of best evidence is never applicable in criminal jurisprudence. She has further argued that the guilt of the accused must be arrived at by the learned trial court on the basis of the evidence as has been adduced by the prosecution and if the same, in exclusion to the best evidence is still able to prove guilt of the accused beyond reasonable doubt, then in such a case the accused can be convicted for the offences that he has been charged of.

11. As regards the second submission of the learned Senior Counsel for the appellant with regard to the absence of motive, learned counsel for the State has drawn the attention of the Court to the deposition of PW-1 before the learned trial court where she has categorically stated that a day before the incident, there was a discussion between the deceased and the appellant with regard to apportioning of the moveable properties. In this regard, learned counsel for the State submits that PW-1 has stated that there was a request by the deceased to the appellant to leave some articles for him and his family which was outrightly refused by the appellant who said that he would not leave anything for the deceased and his family and that he would take everything. According to the learned counsel for the State, this altercation and the answer given by the appellant was proved by statement of PW-1 which has not been disturbed by cross examination only goes to show that

there was an element of animosity which came into existence a day before the incident itself, and the same can be deemed to be reasonable motive. Even otherwise, learned counsel for the State has argued that where the evidence on record is available to prove the intention on the basis of the ocular evidence, the question of motive loses significance which, according to the learned counsel for the State, may be an imperative aspect in a case based on circumstantial evidence but not in a case where direct evidence has come on record.

12. As regards the question of death being caused by the accused by use of an object which is not traditionally used as a weapon of offence but as an agricultural tool and, therefore, the question of intention not being proved by the prosecution, learned counsel for the State has submitted that the intention to cause death or grievous hurt which in its ordinary course of nature can result in death, has to be assessed from some totality of the circumstances. In this case, learned counsel for the State has submitted that there were multiple assaults on the deceased by the appellant and, therefore, the circumstance supports the inference that the appellant wanted to cause the death of the deceased rather than to subject him to bodily pain.

13. Heard learned counsel for the parties and perused the record of the learned trial court.

14. There are two prosecution witnesses who are material in this case. They have been examined. Rani who was also a material witness, as is so appearing from the charge sheet, has not been examined. However, in criminal jurisprudence, it is well settled that the best evidence rule does not apply, and its non-production in trial would not disturb the substratum of the prosecution's case. The prosecution's case is always to be assessed on the basis of evidence adduced by it before the learned trial court. It is the prosecution's prerogative as to whom they examine as witness and even though they may have named ten witnesses in the charge sheet, they are not bound to examine all of them. The Court, on the other hand, would appreciate the guilt of the accused, or lack of it, based upon the evidence adduced by the prosecution. As relating to the best evidence rule and non-examination of a material witness, it is always open to the defence to call that witness in defence. Non-production of material or best evidence before the learned trial court does not mean that the defence is precluded from calling them as witnesses on their behalf. Where the best evidence is a

document, the Court would always decide whether to call for that document under Section 91 of the erstwhile Cr.P.C. either on its own, or if such application is moved by the defence or prosecution. Therefore, this Court with all due respect, rejects the argument that non-examination of a material witness and thereby not producing the best evidence by the prosecution, has gone to weaken its case.

15. In this case, PW-1 is the wife of the deceased. PW-2 is the daughter of the deceased. Both of them have corroborated each other on material particular of the case. PW-1 has categorically stated the events of the morning as to how the appellant came from behind when her husband was sitting near the front door and assaulted him from behind three to four times which caused injuries to the deceased due to which he died on the spot. This witness has also stated that a day before the incident, the discussion had taken place between the deceased and the appellant with regard to apportionment of moveable property to which both of them were heirs.

16. PW-2 is also an eyewitness to the incident and being the daughter, she states likewise as her mother. She has also stated how her aunt (sister of the deceased) came and disarmed the appellant. She also states that the deceased died on the spot. Both these witnesses have not been contradicted on material particulars given in their examination in chief. A suggestion was also given to both these witnesses that they have not actually seen the incident and they are falsely stating before the learned trial court which has been denied by both the witnesses.

17. The post mortem report goes to corroborate the statements of PW-1 and PW-2. However, learned counsel for the appellant has taken an objection for taking the post mortem report into consideration as that was marked as Exhibit without getting the same proved by calling the doctor as a witness and has stated that the post mortem report would not be covered under Section 293 of the erstwhile Cr.P.C. as that only covers scientific reports like FSL reports or ballistic reports etc. He has also submitted that it was essential for the learned trial court to call the doctor before the learned trial court and get him to reiterate the injuries recorded by him in the post mortem report and give an opportunity to the defence to cross examine.

18. However, while going through the impugned order, it appears that at internal page no.5 of the impugned judgment, the learned trial court has

recorded that learned counsel for the accused himself has admitted the genuineness of the post mortem report on account which it was marked as Exhibit Ka-13. Thus, it appears that at the time of admission or denial of the document under Section 294 Cr.P.C., the defence has admitted the genuineness of the post mortem report and the effect of such admission is that no formal proof needs to be adduced. Thereafter, the learned trial court has recorded five injuries seen on the deceased, which are reproduced herein below:

"(i) Abraded contusion in an area of 8 cm x 7 cm on inner side of right eyebrow of right side present.

(ii) Abraded contusion 3 cm x 1 cm on top of right cervical.

(iii) Abraded contusion in an area of 11 cm x 2 cm on outer side of left shoulder joint.

(iv) Abraded contusion in an area of 7 cm x 5 cm on left side face just below ear.

(v) Lacerated wound 4 cm x 2 cm on right side head parietal and frontal bone."

19. The last injury no.5 was a lacerated wound on the right side of the head on the parietal and frontal bone resulting in comminuted fracture and the death was caused on account of the ante mortem injuries which were sufficient to cause instantaneous death and could be caused by the Sabri which is stated to have been used by the appellant in the ordinary course of nature.

20. We find the arguments put forth by the learned counsel for the State forceful that the incident that happened a day previous was sufficient enough to be taken into cognizance to establish motive. Even otherwise, as the offence has been proved by direct evidence of two eyewitnesses who have testified before the learned trial court, the motive loses its significance.

21. As regards the next issue raised by the learned counsel for the parties with regard to the absence of the intention, as the article that was used to commit the offence was not a dangerous weapon and that it was an article that was used commonly in agriculture. As regards this, the learned counsel for the State has submitted that when the appellant entered the house and

approached the deceased from behind, he had concealed the Sabri by holding it in such manner that its possession by the appellant was concealed by his forearms. As regards the argument of the learned counsel for the appellant, the absence of the intention in this case or inability of the prosecution to prove the same, this Court holds that the intention to commit an act depends upon several factors. By examining these factors, the Court is able to infer that the actions of the appellant resulted in the outcome that was expected or desired by the appellant. The first thing that goes to reflect the intention in this case is that it was the vital part of the body (head) that was repeatedly assaulted five times by the appellant.

22. The post mortem report corroborates the deposition of PW-1 who says that her husband's head was struck three to four times by the appellant. The post mortem report also corroborates that part of the witness testimony that the appellant approached the deceased from behind as the injuries on the body are on the head which is parietal and frontal bone, cervical area of the neck, and right shoulder, are all parts of human anatomy which are on the rear of the human body but for the injury on the parietal bone (side of the head) and the frontal bone (front upper part of the skull). Therefore, the intention of the appellant was to approach the deceased in such a manner that the victim did not have a chance to act in self defence.

23. The intention to commit murder cannot be dismissed only on account of nature of weapon used. More particularly, the intention is to be adduced by that part of human anatomy which was targeted by the assailant, coupled with the knowledge (also a part of mens rea) that the use of the article to target a vital part of the human body would cause grievous hurt which, in the ordinary course of nature, may result in death or will result in death. Illustratively, a person throwing a brick at the victim but missing the target altogether or resulting in a minor injury on the head, the person may still be tried and convicted for an offence under Section 307 IPC for attempt to commit murder as the article used and targeted the part of human anatomy was such that if the blow was full and completely received by the targeted part of the body, it would, in all probability, have resulted in death, depending upon the force with which it was thrown. Contrast this, with a pebble thrown on the head of a person which strike the head of the person, for which an offence under Section 307 IPC is inconceivable as the article that was used would never cause either grievous hurt or death in the ordinary course of nature. Another illustration with regard to such a situation where

two labourers have a quarrel and one stabbed the other on the inner part of the victim's thigh which severs the femoral artery, and the victim dies on account of which the accused may only be convicted for an offence under Section 326 IPC for having caused grievous hurt using dangerous weapon or means. Contrasting the same situation, if a quarrel takes place between two doctors and the same injury is caused by the doctor on account of which the victim dies, the doctor may be prosecuted and convicted for an offence under Section 302 IPC or 304 Part-I or II IPC because the doctor being educated in medical science knows exactly where the femoral artery passes. Thus, mens rea should be adduced from the circumstance to see if the accused bore adequate knowledge or intention.

24. Thus, in the present case, the argument of the learned Senior Counsel appearing on behalf of the appellant that the intention has not been proved, this Court rejects the same. The deceased was struck not once but four times. He died on the spot. The ferocity of the attack on the victim disclosed the intention of the accused person to cause death as he arrived there surreptitiously concealing the weapon, from behind the deceased in order to ensure that the deceased did not even get a fighting chance or an opportunity to exercise his right of private defence. Where the knowledge is of such a nature that a reasonable person can draw the inference that the actus reus would, in all probability than not, in the ordinary course of the nature, only result in death and that the death would be the only probable outcome in which case, the conviction may take place under Section 302 IPC. In the present case, as already stated by learned counsel for the State that the deceased has been targeted repeatedly on the head which clearly shows that the appellant's intention was not merely to cause hurt to the deceased as if that was the intention, the appellant could have struck any non-vital part of the body.

25. Under the circumstances, in view of what has been argued and evidence adduced before the learned trial court, this Court holds that the appellant acted in a manner with the intention of causing death of the deceased which was an natural outcome of his action, therefore, we do not find any infirmity or perversity in the impugned judgment passed by the learned trial court. Consequently, the present appeal is dismissed.

26. However, we have also taken into consideration the argument put forth by learned Senior Counsel for the appellant that the appellant is now 82

years of age and, therefore, the Court may consider in reducing his sentence to the period undergone. That, unfortunately, is an impossibility for this Court. The evidence adduced did not reflect a sudden and grave provocation or sudden fight account of which the Court may examine the possibility of setting aside the conviction under Section 302 IPC and hold the appellant guilty under Section 304 Part-II IPC. There is no such mitigating facts available to scale down from Section 302 IPC to Section 304 Part-II IPC.

27. The fact that the appellant would have to go back to jail after 40 years, no doubt, disturbs this Court but this Court, not being vested with powers of the Supreme Court under Article 142 of the Constitution of India, cannot do otherwise but send the appellant now back to jail to complete the remaining part of his life sentence.

28. The appellant's bail bonds are cancelled. He shall surrender forthwith before the learned court concerned which shall send him back to jail to complete the remaining part of the sentence. If the appellant does not surrender before the learned court concerned, shall issue non-bailable warrants to secure his presence and thereafter send him to jail.

29. The record of the learned trial court be sent back.

July 17, 2026

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(Jai Krishna Upadhyay,J.) (Atul Sreedharan,J.)