

Judgement Reserved

AFR

Court No. - 46

Case :- CRIMINAL APPEAL No. - 558 of 1996

Appellant :- Chhunna

Respondent :- State of U.P.

Counsel for Appellant :- S.C.Dwivedi,Deepak Singh,Rahul Kumar Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Sunita Agarwal, J.

Hon'ble Om Prakash Tripathi, J.

(Delivered by Hon'ble Om Prakash Tripathi, J.)

Heard Sri Rahul Kumar Singh, learned counsel for the appellant and Sri Roopak Chaubey, learned A.G.A. for the State-respondent and perused the material on record.

The appellant has preferred the present criminal appeal aggrieved by the judgment and orders dated 12.03.1996 and 13.03.1996, passed by the District and Sessions Judge, Kanpur Dehat in Sessions Trial No.173 of 1995 "State vs. Chhunna and others" Police Station Sheorajpur, District Kanpur Dehat, convicting and sentencing the appellant to undergo life imprisonment under Section 302 of IPC with a fine of Rs.3,000/-, in default thereof, to undergo one year rigorous additional imprisonment.

The prosecution case is as follows:

Subhash Chandra Mishra, the complainant, s/o late Sunderlal Mishra, r/o Village Dubiana, P.S. Sheorajpur, District Kanpur Dehat lodged the first information report on 23.03.1995 alleging that the deceased Sunder Lal r/o village Dubiana, Police Station Sheorajpur, District Kanpur Dehat, had his flour mill towards east of his house at a distance of about 1-1/2 furlong near G.T. Road. On 22.03.1995 at about 8:00 PM, Sunder Lal deceased, his son Subhash Chandra and Rakesh were busy in grinding flour. One Amit resident of village Baharmapur came to the said flour mill for grinding his wheat. Accused Chunna and Dinesh, who were relatives of Amit, were also with him. The accused wanted to get their wheat grinded first, breaking the number of other customers, Subhash Chandra and his brother Rakesh asked them to get the wheat grinded on their turn. On that, accused Chunna

and Dinesh threatened them to see. Thereafter Amit went to his house after getting his wheat grinded.

On the said night of 22.03.1995, Sunder Lal deceased, was sleeping inside the premises of flour mill on a Takhat. His son Rakesh P.W.2 and Suresh Kumar, brother-in-law (Sala) of Subhash Chandra P.W.1 were sleeping on another Charpai near the Takhat of the deceased. A lighted lantern was hanging inside the premises. At about 11:45 PM. Sunder Lal deceased raised cries. Hearing his cries, Rakesh P.W.2 and Suresh Kumar woke up and observed that Chhunna- accused was inflicting knife blows on the deceased. On the challenge given by Rakesh P.W.2 and Suresh, Chhunna accused fled away. Both Rakesh and Suresh chased Chhunna and observed that accused Dinesh was standing on the gate of flour mill. Both accused fled away taking benefit of darkness. Hearing alarm, the other persons of the village also came to the spot.

Sunder Lal deceased had fallen down on the ground and had profused bleeding from the injuries he sustained. Injured was taken to the P.H.C. Sheorajpur at about 3:00 AM. He was attended there by the Pharmacist P.W.3 as the Doctor was not present. After providing first aid, he was referred to L.L.R. Hospital, Kanpur City. But before being shifted to L.L.R. Hospital, the deceased succumbed to his injuries at 5:10 AM. Sri Udai Narain Yadav, P.W.3 sent information of the death of the deceased Sunder Lal, vide memo Ext.Ka-4 to the Police Station Sheorajpur.

After the death of the deceased, Subhash Chandra P.W.1 prepared report of the occurrence Ext.Ka-1 in the Hospital and came to the Police Station Sheorajpur, where he lodged the report at 6:50 AM on 23.03.1995. The Chick FIR Ext.Ka-19 was prepared by the then Head Constable who made an endorsement of the same at G.D. report Ext.Ka-20 and registered a case under Section 302 IPC against the accused.

The investigation of the case was taken up by Sri Vijay Narain Pandey, I.O., P.W.6. He interrogated the witness of the fact, Subhash Chandra P.W.1 and proceeded to P.H.C., Sheorajpur, where he appointed Panches and conducted inquest of dead body of Sunder Lal and got prepared inquest report Ext.Ka-7, diagram corpse, challan corpse, letter to C.M.O. and R.I. Exts. Ka.-9 to Ka-12 through S.I. Sri Lalluji Dubey. He got the dead body sealed and

prepared sample of seal Ext. Ka-8 and handed over to the Constable Sri Shyam Babu P.W.5 and Home Guard Sri Suresh Chandra Pandey for taking it for post mortem. The Investigating Officer thereafter visited the place of occurrence and prepared site-plan Ext. Ka-13 on the pointing of complainant. He also took into possession the blood-stained and plain earth Ext.2/1 and 2/2, sealed it in different containers and prepared recovery memo Ext.Ka-15. He also took into possession blood-stained 'Dhoti' of the deceased, sealed it and prepared recovery memo Ext.Ka-14.

The autopsy on the dead body of Sunder Lal deceased was conducted on 24.03.1995 by Dr.L.K. Tiwari P.W.4 who found stitched wound on the scrotum, inguinal region and contusions on the left side of chest and head and cause of death was opined due to shock and haemorrhage as a result of antemortem injuries. He prepared post mortem report Ext. Ka-6.

On 24.03.1995, the Investigating Officer interrogated Rakesh P.W.2 and Suresh Pandey. He apprehended accused Chhunna and Dinesh. On the pointing of Chhunna accused, I.O. recovered blood-stained knife Ext.1, the weapon of assault, sealed it and prepared recovery memo Ext.Ka-16. On 28.03.1995, he inspected the place of recovery of knife and prepared site-plan Ext.Ka-17 and interrogated the witnesses of recovery and on completion of investigation, he submitted the charge sheet Ext.Ka-18 against the accused under Section 302 IPC on 04.04.1995.

The cognizance of the offence had been taken by the Chief Judicial Magistrate, Kanpur Dehat, who committed the case to the Court of Sessions for trial on 5.7.1995.

Accused Chhunna was charged with the offence punishable under Section 302 IPC while accused Dinesh was charged with the offence punishable under Section 302/34 IPC. The accused pleaded not guilty and contended that they being workers of Bahujan Samaj Party were falsely implicated on account of enmity and Party-Bandi.

The prosecution, in support of its case, examined Subhash Chandra P.W.1, Rakesh P.W.2, Udai Narain Yadav P.W.3, Dr. L.K. Tiwari P.W.4, Constable Sri Shyam Babu P.W.5, Sri Vijay Narain Pandey, I.O. P.W.6 and S.I. Sri Amarpal Singh P.W.7.

Rakesh P.W.2 is a witness of fact while evidence of other witnesses are formal in nature. Besides documents referred to above, the prosecution has also tendered in evidence the report of Joint Director, Forensic Science Laboratory, Lucknow, Ext. Ka-19.

According to prosecution, Sunder Lal deceased died on account of knife injuries. The accused have not disputed identity, death and cause of the death of deceased Sunder Lal.

So far as the FIR of this case is concerned, the occurrence took place in the night of 22.03.1995 at about 11:45 PM inside the flour mill premises of the deceased, situated in Village Dubiana, Police Station Dheorajpur, District Kanpur Dehat. Thereafter the deceased was taken to the P.H.C. by Khatola (small cot) at about 3:00 AM. Doctor was not present therefore, the Pharmacist had attended the patient and after primary treatment, referred the injured to L.L.R. Hospital, Kanpur City. But before being shifted to L.L.R. Hospital, the deceased Sunder Lal expired at 5:10 AM and thereafter complainant prepared a written report and on the basis of written report, FIR against the accused was lodged at about 6:50 a.m. on 23.03.1995, i.e., after one hour and 40 minutes after death. It is also proved that due to serious injuries, complainant was busy in treatment to save life of his father, after death, information was given to the police station. FIR of the case has been lodged promptly without unnecessary delay and without any legal consult.

So far as the motive of the incident is concerned, learned counsel for the appellant submitted that the appellant has weak motive to cause the incident. The appellant has been falsely implicated in this case, being member of BSP.

It is a case of eye-witness account of those who had seen the occurrence and in case of eye-witness, direct evidence, motive becomes immaterial.

In support of above contentions, learned A.G.A. placed reliance on following decisions :

In Pratap Singh and others vs. State of UP 2021, SCC Online All 686, the Court held that :

‘Motive is not very relevant in a case of direct evidence, where it dependable ocular version is available. Once, there is evidence

forthcoming on the basis of an eye witness account that is consistently narrated by multiple witnesses motive is hardly relevant. “

In **Abu Thaker Vs. State of Tamil Nadu, (2010) 5 SCC 91**, the Court held that :

“It is settled legal proposition that even if the absence of motive and if allowed is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime, therefore, in case, there is direct, trustworthy evidence of witnesses as to commission of an offence, the motive part uses its significance. Therefore, if the genesis of motive of occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by reason of absence of motive, if otherwise the evidence is worthy of reliance.”

In **Bipin Kumar Mondal Vs. State of West Bengal, (2010) 12 SCC 91**, the Court held that :

“Motive is of no consequence and pales into insignificance when direct evidence establishes the crime. Motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain it. Ocular testimony of the witnesses if reliable cannot be discarded only by the reason of the absence of motive.”

Thus, from the evidence, it is proved that accused Chhunna and Dinesh threatened the deceased Sunder Lal to see at about 8:00 PM and committed the gruesome murder of the deceased Sunder Lal within four hours in the midnight, in the presence of eye-witness.

On the basis of law laid down as above, the presence of ocular evidence, the motive becomes immaterial and further the prosecution has also proved the motive for causing the incident by the appellant.

Dr. L.K. Tiwari, P.W.4 who conducted the autopsy on the dead body of the deceased on 24.03.1995 at 2:15 PM found following facts :-

“ The deceased was aged about 60 years and had died before 1-1/2 day. He had average built body. Rigor mortis passed of from both extremities. Eye and mouth closed. Post mortem staining present on the whole of the back buttock and thighs. Abodmen distended. Blisters present. Skin peeled off at places.”

The Doctor found following ante-mortem injuries on the dead body of the deceased Sunder Lal.

“1. Contused swelling 8 Cm. x 4 Cm. on left lateral side of hand just above left ear.

2. Contusion 6 Cm. x 4 Cm. on the left lateral aspect of lower part of chest and upper part of abdomen.
 3. Stitched wound 8 Cm. long with 9 stitches present on right side of scrotum.
 4. Stitched wound 3 Cm. long with 3 stitches present on right side of inguinal region on medial side
- Scrotum was swollen.”

On internal examination, both lungs were pale. Both chambers of heart were empty. 1-1/2 Litre blood was present in abdominal cavity. Watery fluid was present in the stomach. Semi solid fluid was present in the small intestines and gases and faecal matters were present in the large intestines. Gallbladder, pancreas, spleen and both kidneys were pale. In the opinion of Doctor, death was caused due to haemorrhage and shock as a result of ante-mortem injuries.

Dr. L.K. Tiwari, P.W.4 further opined that injuries further clarified that stitched wounds were not lacerated as oozing of blood is not possible from lacerated wound. However, he stated that he had not opened the stitched wounds.

It is true that the Pharmacist, who examined the injuries of the deceased, had not mentioned the nature of injuries but considering the internal condition of the dead body and bleeding nature of injuries, Sri Udai Narain Yadav, P.W.3 has stated that injuries were caused by some sharp edged weapon. Dr. L.K. Tiwari, P.W.4 also stated that a huge amount of blood had come out from stitched wounds (injuries nos. 3 and 4). Thus it is clear from the medical evidence is that injuries nos. 3 and 4 were not lacerated or stab wounds but incised wound.

Regarding injuries Nos. 1 and 2, Dr. L.K. Tiwari P.W.4 has opined that these injuries could be caused by fall on the ground. It has been clarified by Rakesh P.W.2 that after sustaining knife injuries, the deceased raised cries and fell down on the ground from Takhat, on which he was sleeping. Therefore, there is explanation regarding injuries nos. 1 and 2, which could be caused by the fall.

It is clear from the above medical evidence that the deceased died on account of injuries on his scrotum and inguinal region. Thus, the prosecution

has successfully proved identity, death and cause of death of Sunder Lal, deceased.

The main question before us is that whether the appellant Chhunna had committed the murder of Sunder Lal deceased by inflicting knife injuries.

P.W.1 Subhash Chandra was admittedly at his house in the night of occurrence and had not seen the occurrence. This evidence is hearsay so his evidence is not material for proving the manner of occurrence and complicity of accused.

P.W.2 Rakesh is only witness, who stated about the manner of occurrence and complicity of accused. According to his evidence, in the night of occurrence, the deceased, he and his relative Suresh were sleeping in the flour mill premises. The deceased was sleeping on the Takhat while he and Suresh were sleeping on a Charpai. Lighted lantern was hanging near the Thakat of deceased and his Charpai. At about quarter to mid-night, he heard the shrieks of his father. He and Suresh woke up and saw that accused Chhunna was inflicting knife blows on the deceased. He and Suresh raised alarm and chased him. The other accused Dinesh was standing on the gate of flour mill. The accused started running. He and Suresh chased the accused but they ran away.

In his cross-examination, he clarified that he came to the flour mill on the night of occurrence at about 10:00 pm alongwith Suresh. His father, the deceased came to the flour mill at 9:00 pm when the operation of flour mill was closed. Subhash Chandra P.W.1 stated that he has his residential house and in the night of occurrence, he, his wife and children of Rakesh were sleeping inside the house and Rakesh was sleeping inside the flour mill premises. Rakesh P.W.2 has denied the suggestion of accused that he was sleeping in his house in the night of occurrence. There is no evidence otherwise on record to prove that the witness (P.W.-2) was sleeping inside his house on the night of occurrence. The deceased was aged man of about 60 years, therefore, other member of his family required to sleep in the flour mill premises. There is nothing in the cross-examination of Rakesh P.W.2 to doubt his presence on the spot in the night of occurrence.

Rakesh further clarified that he had seen Chhunna accused inflicting one knife blow. It is clear from the evidence of the witness that he woke up on hearing the shrieks of the deceased. This shows that the first blow was inflicted on the deceased before his shrieks and therefore, it was natural for Rakesh P.W.2 to observe only one knife blow on the deceased. Regarding identity of accused Chhunna and Dinesh, Rakesh P.W.2 stated that he was knowing Chhunna accused prior to the incident but was not knowing Dinesh accused before. He also stated that he had seen Chhunna accused twice prior to the occurrence in the market but did not talk to him. Subhash Chandra P.W.1 stated that he knew Chhunna and Dinesh prior to the incident but he was not knowing their parentage. On the day of occurrence, when altercation took place between him and the accused, he enquired parentage and residence of accused Chhunna and Dinesh from their relative Amit who told them the details. It was on the basis of above information, he mentioned the name, parentage and residence of the accused in the FIR. The evidence of Rakesh P.W.2 that he knew Chhunna accused prior to the incident, and met him twice prior to the occurrence in the market, had not been challenged, and therefore, there is ample evidence on record to prove that Rakesh P.W.2 knew Chhunna accused prior to the incident.

No direct enmity, ill-will or grudge of witness with the accused or any member of his family had been suggested or proved. The accused contended in their statement under Section 313 Cr.P.C. that they were active members of Bahujan Samaj Party and, therefore, were falsely implicated. What grudge Rakesh P.W.2 had with the accused, had not been specified. Assuming that the accused were members of Bahujan Samaj Party, it was no ground for Rakesh P.W.2 to be enmical with him. Therefore, the alleged enmity suggested by the accused has no weight.

Beside the ocular evidence of Rakesh P.W.2, there is evidence of I.O. Sri Vijay Narain Pandey P.W.6, who stated that he apprehended accused Chhunna on 24.03.1995 and on his pointing out recovered blood stained knife Ext.1. The recovery memo Ext.Ka-16 shows that accused had taken the Investigating Officer and the witnesses at a lonely place besides broken boundary of the old hospital and took out blood stained knife from the heap of bricks and handed over to him. The above knife Ext.1 was sealed on the spot

and was sent to Forensic Science Laboratory for analysis and report. The report of the Joint Director Forensic Science Laboratory U.P. Lucknow, Ext.Ka-19 shows that item no.3 (knife) contained human blood. There is nothing in the cross-examination of the I.O. to disbelieve him on the issue of recovery of knife on the pointing out of the accused Chhunna. Length of knife is 8 angul, i.e., about 8 cm and injury no.3 was also 8 cm in length with nine stitches, which also reflects that the recovered knife was one, which had been used in causing fatal injury on the person of the deceased. In this way, the evidence of Rakesh P.W.2 finds corroboration from the recovery of human blood-stained knife on the pointing out of Chhunna accused. Apart from this, human blood was found on plain and blood-stained earth, dhoti, shirt, half sweater, vest and towel of the deceased.

Learned counsel for the appellant submitted that P.W.2 is the near relative of the deceased and due to this reason, his evidence should not be considered reliable.

Per contra, learned A.G.A. submitted that evidence of related witnesses is reliable but must be scrutinized with care and caution. On this point, learned A.G.A. relied upon the judgment of the Apex Court in **Bishwanath Dhuley vs. State of Maharashtra, 1997, SCC Criminal 1075**, wherein it has been held that : “mere relationship does not qualify the witness even if independent witness in spite of being available not produced related witness to be the competent witness. However, their evidence must be scrutinized with care and caution”.

Learned A.G.A. has also relied upon another judgment of Apex Court in **Kailash vs. State of Uttar Pradesh, 1998 SCC Criminal 1980**, wherein it has been held that: “absence of any material on record to show that prosecution witness has any enmity with the accused, his evidence cannot be brushed aside merely on the ground of relationship, generally relations of victim are interested in bringing the book the real culprits”.

It is evident that the accused and the deceased belong to different castes and had no reason of enmity. Witness P.W.2 was not an interested witness and his presence on the spot at the time of occurrence, can not be disputed. It is not expected that in the mid-night, in the premises of flour mill, presence of independent witness, was not probable. In such circumstances, P.W.2 who was sleeping on the Takhat nearby the deceased, was the best,

appropriate and natural witness of the occurrence and his evidence is fully reliable. Thus, mere relationship of the witness with the deceased is no ground to disbelieve his testimony.

It is submitted by the learned counsel for the appellant that P.W.2 is the son of the deceased and he is the interested sole witness and in this situation, evidence of P.W.2 is not reliable as it has no corroboration.

It is settled that the testimony of single eye witness can be acted upon if otherwise reliable and corroboration required only when his evidence is open to doubt and suspicious. A close relative who is a natural witness, cannot be recorded as an interested witness. The term 'interested' postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because some animus with accused for some other reason. Testimony of solitary witness has to be examined with great care and circumspection. In the present case, P.W.2 is the sole eye witness of the occurrence, who is the son of the deceased. He has no animus to implicate accused falsely. In the long cross-examination, nothing in his evidence contrary to the case of the prosecution could come out. In fact, P.W.2 is solitary, sterling eye witness, whose testimony is wholly, reliable and does not need any sort of corroboration. Besides this, evidence of P.W.2 is corroborated by the Investigating Officer P.W.6, who had recovered blood stained knife on the pointing out of the applicant. Thus, on the basis of solitary evidence of P.W.2, although, witness is related by blood with the deceased, conviction can be recorded. The trial Court has not committed any error much less manifest error in recording the conviction of the accused appellant Chhunna.

On the basis of above discussion, it is clear that the prosecution has successfully proved the manner of occurrence that accused Chhunna was real assailant who inflicted the fatal blow on scrotum, inguinal region of the deceased. The nature of ante-mortem injuries of the deceased were such that it could cause his death in all probabilities. This shows that accused Chhunna had every intention and knowledge that injury caused by him would result in the death of the deceased. Therefore, the prosecution has successfully proved the guilt of accused Chhunna for the offence punishable under Section 302

IPC. It is a murder made with cool mind in a planned way four hours after altercation on the same day. It is not a case of grave and sudden provocation.

Co-accused Dinesh was not found guilty by the trial Court and was acquitted for the charge under under Section 302/34 IPC. The State of Uttar Pradesh had not filed any appeal against the acquittal of co-accused Dinesh and no such appeal has been brought before us.

On the basis of above discussion, we are of the view that the judgment and orders of the trial court dated 12.03.1996 and 13.03.1996 passed by the District and Sessions Judge, Kanpur Dehat in Sessions Trial No.173 of 1995 "State vs. Chhunna and others", Police Station Sheorajpur, District Kanpur Dehat, convicting and sentencing the accused appellant Chhunna to undergo life imprisonment under Section 302 IPC with fine of Rs.3,000/-, in default thereof, to undergo one year rigorous additional imprisonment, is hereby confirmed.

During trial, the accused appellant Chhunna was on bail. During appeal, the appellant Chhunna was on bail. The appellant was arrested on 21.01.2020 in execution of the non-bailable-warrant and is detained in the District Jail, Mati, Kanpur Dehat at present. The accused appellant Chhunna is directed to serve out the remaining period of his sentence. The bail bonds filed by the appellant are forfeited and sureties are discharged.

The appeal is devoid of merits and liable to be dismissed. The appeal is accordingly, **dismissed**.

Certify this judgment to the Court below immediately for compliance. The compliance report be submitted through the Registrar General, High Court, Allahabad.

Order Date : 24.05.2022.

Monika

(Hon. Om Prakash Tripathi, J.) (Hon. Sunita Agarwal, J.)