

Reserved.

Criminal Appeal No.994 of 1982.

Deo Narain and others.....vs.....State of U.P.

Hon'ble Shabihul Hasnain, J
Hon'ble Dinesh Kumar Singh, J

(Delivered by Hon. Shabihul Hasnain, J)

This criminal appeal has been filed against the judgment and order dated 18.12.1982 passed by Special Judge/Addl.Sessions Judge, Bahraich in S.T. No.92 of 1982 State vs. Deo Narain and others convicting the appellants under Section 302/34 I.P.C. and sentencing them to under go imprisonment for life.

During pendency of the appeal, on perusal of the report of C.J.M., Bahraich, the appeal filed by appellant no. 1 Deo Narain has been dismissed as abated.

Briefly stated the case of the prosecution is that one Jagdish, who is real brother of accused Deo Narain and Keshav Ram, was not married and owned 16-17 bighas of agricultural land. He had executed a writing in respect of this land in favour of Vaidehi Baba. On the death of Vaidehi Baba, being his Chela Vimla Saran succeeded to the land. On the death of Vaidehi Baba, accused Deo Narain and Keshav Ram laid title to the agricultural land once owned by their brother Jagdish. For this reason, Vimla Saran used to be cautious because of ill-design of the two brothers of Jagdish. Vimla Saran used to live with Jwala Prasad (P.W.3), who is cousin of accused Deo Narain and Keshav Ram. On account of land dispute, proceedings under Sec.107/116 Cr.P.C. was initiated between Vimla Saran and accused Deo Narain, Keshav Ram and Ram Kuber.

On 11.12.1981 at about 6.45 a.m. Inda (P.W.2), Jwala Prasad (P.W.3) and Luxman Saran (P.W.5) were warming themselves by the side of the Alao. Sutu (P.W.4), who servant of them, was yoking the bullocks. Deceased

Vimla Saran with a lota in his hand was washing his mouth in front of the eastern entrance. Accused Ram Kuber and Deo Narain armed with kattas, accused Satyadeo armed with Addhi banduk and accused Keshav Ram unarmed, reached there. Accused Keshav Ram said that there was good opportunity and the 'sala' be murdered. Accused Ram Kuber fired with Katta on Vimla Saran, who tilted a little with lota in his hand. Accused Kesdhav Ram then said that he was still gazing, whereupon accused Deo Narain fired his Katta on Vimla Saran and Satyadeo also discharged his Addhi Banduk on him. Inda (P.W.2) raised alarm and ran towards the place of incident but accused Satyadeo hit her on the shoulder with his Addhi Banduk. Thereafter, the accused persons ran away extending threats. Then the other villagers also reached there. Vimla Saran was found dead.

The F.I.R. of the incident was lodged by Jwala Prasad (P.W.3) on 11.12.1981 at 9.05 a.m. The distance of place of occurrence and the police station is six miles. As said above, the incident took place at 6.45 a.m. The F.I.R. appears to have promptly been lodged.

Inda, the injured (P.W. 2) was medically examined by Dr. R.P. Singh P.W. 1 on 11.12.1981 about 9.00 p.m. In the opinion of doctor, she complaint pain on back of left shoulder but he could not detect any mark of injury.

Postmortem on the dead body of deceased Vimla Saran was conducted by Dr. R.P. Srivastava (P.W.8). In his opinion, the deceased received fire arm injuries and the death occurred due to shock and haemorrhage as a result of ante mortem injuries, which in the normal course were sufficient to cause the death. In his opinion, the death could have occurred at 7 or 7.30 a.m. on 11.12.2018. This opinion of him finds corroboration from the prosecution case in the F.I.R. The Investigating Officer found pellets and tikuli strewn near the place of incident, recorded the statement of India (P.W.2) Luxman (P.W. 5) and other witness. India (P.W. 2) was then sent for medical examination as mentioned earlier. On completion of investigation, charge sheet against the accused were submitted. Charges were framed against them. They pleaded not guilty and claimed to be tried. The prosecution in support of its case examined Dr. R. P. Singh (P.W.1), India (P.W. 2), Jwala Prasad (P.W. 3) Sutu (P.W. 4), Luxman Saran (P.W. 5), Clerk Constable Mahadeo Prasad (P.W. 6), S.I. Raghuvans Misra(P.W. 7) and Dr. R. P. Srivastava (P.W. 8).

The trial court, after going through the statement of prosecution witnesses coupled with relevant material available on record and hearing the parties' counsel, convicted and sentenced the appellants as enumerated above.

We have heard the learned counsel for the appellants Sri Ishant Bhagel and the learned A.G.A. and find that the trial judge has rightly arrived at the conclusion that the prosecution has been able to prove the presence of the witnesses and their version with regard to the accused persons committing the murder of the deceased.

Learned counsel for the appellants contended that there was no motive for the appellants to commit the crime. Rather, it was for for Inda P.W.2 and Laxman Saran P.W.5, to have falsely implicated them on account of being interested in the land to be vested in them after the death of Vimla Saran. He laid emphasis on the statement in cross-examination of Inda P.W. 2 that the land which belonged to Baba, is in possession of her son because he had become his *chela* and litigation with regard to this land was initiated by Jogendra on the advise of the accused. The statement of Inda P.W. 2 regarding his son being Chela, is corroborated by the cross-examination of her son Laxman Saran P.W. 5, who stated that he has been the *chela* of Vimla Saran since last one and a half or two years.

We are of the view that the motive is too feeble plea in the circumstances of the present case to disbelieve the prosecution story when there is direct ocular account version of the eye witnesses. The presence of Inda (P.W.2), her husband Jwala Prasad (P.W.3) and Luxman Saran P.W. 5 at the place of occurrence, cannot be doubted. So far as plea of false implication because of eye witnesses Inda P.W. 2 and Laxman Saran P.W. 5, being interested for the land of Vimla Saran to be vested in them, is concerned, has no force in the circumstances of the case. We find no strong reason with them to have escaped the real culprit while roping in the appellants in the commission of the murder of Vimla Saran.

Inda (P.W.2) in her statement has narrated the case of the prosecution as in the F.I.R. lodged by Jwala Prasad (P.W.3). The evidence of P.W.2 shows that the shot discharged by Ram Kuber hit the deceased on the back. Thereafter, on the instigation of Keshav, Dev Narain fired and then Satya Dev fired with Addhi Banduk. She raised alarm, on which Satya Dev hurled

but of the gun on her shoulder. She clearly stated that the villagers reached the place of occurrence after the accused had ran away. We find no reason to disbelieve her testimony. In her cross-examination, she has detailed the firing on the deceased. Medical report also supports the statement made by her. We find no contradiction in her statement in the cross-examination. Nothing in her statement has come which may discredit her testimony.

Besides the evidence of Inda P.W.2, we find consistent ocular account version of Laxman Prasad P.W.5. He stated that he was warming himself by the side of the Alav while the deceased was washing his mouth when the accused reached there. He correctly stated the weapons with the accused and also the sequences in which the three armed accused discharged their weapons on Vimla Saran at the exhortation of Kesho Ram. We find no force in the argument of the appellants counsel with regard to sequence of firing also and other minor discrepancies, which are of trivial nature. This witness is a child witness and whose fire was opened first and where was the face of the deceased, is immaterial and his testimony on this score cannot be rejected. The whole incident have taken place within a short span of moments. On the basis of his statement, the statement of Inda P.W.2, and to that of Jawala Prasad P.W. 3, who has rightly been found by the trial court to be partly reliable, we have no hesitation in holding that their testimony satisfy the test of careful scrutiny and there is no reason to disbelieve the prosecution case. We are of the considered opinion that the prosecution by cogent reason has successfully been able to prove the guilt of the accused-appellant beyond all reasonable doubts being one punishable under Section 302/34 I.P.C.

For the reasons discussed above, this criminal appeal fails and is dismissed.

Appellants are on bail, their bail bonds are cancelled and sureties discharged. They shall surrender forthwith to serve out the sentence awarded to them by the trial court.

The record of the trial court be transmitted for compliance forthwith.

Order date:20: 4 : 2018 (Dinesh Kumar Singh,J) (Shabihul Hasnain,J)

