

Court No.3

Case :- CRIMINAL APPEAL No. - 1789 of 1982

Appellant :- Ram Prakash

Respondent :- State Of U.P

Counsel for Appellant :- V.S.Singh,H.O. Khare,Jitendra Singh,A.C.,Vinay Saran [A.C.]

Counsel for Respondent :- Dga,Sagir Ahmad

Hon'ble Krishna Murari,J.

Hon'ble Ravindra Nath Kakkar,J.

(Per Hon'ble Ravindra Nath Kakkar,J.)

This criminal appeal has been preferred against the judgment and order dated 28.7.1982 passed by IIIrd Addl. District and Sessions Judge, Hamirpur in Sessions Trial No.166 of 1980 convicting and sentencing the appellants under Sections 302/34 I.P.C. to undergo imprisonment for life and to pay a fine of Rs.1000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months; the appellant no.1 Ram Prakash was further sentenced to undergo rigorous imprisonment for three years under Section 118 I.P.C. with a fine of Rs.500/- and in default of payment of fine to undergo further three months imprisonment. Both the sentences were ordered to run concurrently.

As the appellant no.2 Kallu @ Ram Prakash died, the appeal filed by him stands abated vide order dated 19.11.2015.

Prosecution story, in brief, is that Ram Prakash lodged a written report Ex.Ka-3 on 3.2.1980 at 5.00 a.m. at Police Station Sumerpur stating therein that in the night of 2/3.2.1980 when he was sleeping in his chaupal at about 12.00 midnight his mother dragged him and softly informed him that there is light coming inside the house and invited to come. He went inside the house with empty hands and saw three persons in which two

persons already left the place and the third one was about to go outside. At that point of time he caught hold of him from his waist. When he stand up he made attack with his *barchi* (*spear*) on him, then the informant snatched spear from his hand and made assault on the person of deceased. The inflicted injury was not serious so he pulled informant inside the courtyard where altercation took place between them. The complainant made noises but no-one arrived there and complainant further assaulted him 3-4 times. Lastly complainant made a fatal assault to deceased thereafter villagers reached on the spot. Further allegation is that two unknown persons (thieves) took away jewellery of his daughter in which four were of gold and three were of silver. After this incident they have become inimical to him so complainant requires arms for him. On the basis of this written report FIR was got lodged at the Police Station Sumerpur. Further a written report Ex.Ka-5 in the form of questionnaire has been filed in which complainant has stated that the dead person Bhuiyadeen was of his village whose father's name is Kaliya Kanchi and the other two persons who came along with him could not be identified. Further allegation is that two unknown persons escaped from the *nakab* made in the wall of the house and the deceased was trying to escape from this *nakab*. It also transpires from the record that on the same day the wife of the deceased Smt. Ram Sakhi lodged a written report which is Ex.Ka-1 stating therein that in the midnight of the incident Ram Prakash Kachhi approached her house and inquired about my husband to which she went to woke up her husband inspite of being obstructed by her father-in-law. Her husband Bhuiyandeen accompanied towards the house of accused Ram Prakash. Further allegation is that accused and the deceased were close friends, hence she could not made serious resistance. Further allegation is that the accused Ram Prakash fraudulently in order to grab the jewellery

took her husband to his house and killed him. It transpires from the record that earlier crime number registered under Sections 457/380 I.P.C. which was lodged on the written report of the complainant Ram Prakash (who is now accused) has been converted under Sections 118/302 I.P.C. Entry to this effect has been made in the general diary. Perusal of record shows that one written report was lodged by complainant Ram Prakash under Sections 457/380 I.P.C. at 5.00 a.m. and the second written report by Smt. Ram Sakhi wife of deceased was handed over to police at the time of investigation at 11.00 a.m. at the place of occurrence. Taking both report into consideration it is established fact that the time, date and place of occurrence is admitted in this case and on the basis of written report of Smt. Ram Sakhi wife of deceased, Ram Prakash complainant was arrayed as accused in this case and after investigation charge sheet has been filed against the accused Ram Prakash and Kallu. Ram Prakash in his written report Ex.Ka-5, available on record, stated that deceased along with two unknown persons in order to steal the jewellery made a *nakab* in the house of complainant and one amongst three thieves Bhuiyandeen was caught red handed on the spot and altercation and assault took place in between the complainant and accused Ram Prakash and deceased Bhuiyandeen resulting fatal injuries to the deceased by his own weapon *barchi*. The written report by the wife of the deceased Ram Sakhi has been given to the fact that accused persons took Bhuiyandeen from his house and in order to grab the jewellery murdered the deceased Bhuiyandeen under a conspiracy. Further to add that it also transpires from the evidence led by the prosecution that these jewelleries belonged to one Kailash whose marriage was going to be solemnized about three months ago before this incident but due to intervention of the first wife of Kailash the marriage had to be cancelled but the jewellery has not been returned to the side of

bridegroom and the complainant who is now accused in this case in order to get the jewellery conspired and murdered Bhuiyandeen. It is relevant to mention that in order to substantiate the prosecution version Raj Bahadur Kunni – P.W.1, Ram Sakhi – P.W.2, Bodhi – P.W.3, Rameshwar– P.W.4, Dr. V.N. Mehrotra – P.W.5, Jagran Singh – P.W.6, Rajendra Veer Singh – P.W.7, Baij Nath Singh – P.W.8, S.I. Asha Ram Tripathi – P.W.9, S.I. Kanhaiya Pandey – P.W.10 were examined. Raj Bahadur Kunni- P.W.1, Ram Sakhi- P.W.2, Bodhi – P.W.3, Rameshwar – P.W.4 were examined as eye witnesses. Jagran Singh – P.W.6 was scribe of the written report dictated by complainant Ram Prakash. Baij Nath Singh- P.W.8 is witness of recovery of jewellery made from the co-accused Kallu. The testimony of P.W.1, P.W.2, P.W.3 and P.W.8 relates with the facts of the prosecution version.

Dr. V.N. Mehrotra – P.W.5 who conducted the post mortem examination of deceased Bhuiyandeen was examined in this case and proved the post mortem report which is Ex.Ka-2 available on record. Perusal of post mortem report reveals that at the time of examination following ante mortem injuries were found on the body of deceased :-

1. Punctured wound, 1½ cm x ½ cm x 13 cm deep, behind the left ear.
2. Punctured wound, 1 ½ cm x ½ cm x 13 cm deep, above the left eye brow.
3. Punctured wound, brain cavity deep.
4. 11 punctured wounds, on the chest, which were 1 cm to 1½ cm broad and chest cavity deep, which had the shape of a cone (*takli*).
5. 4 punctured wounds, around umbilicus, which were abdomen cavity deep.
6. 7 punctured wounds at the forearm, which were 4/5 cm deep.
7. Punctured wound, through and through the right palm.
8. Punctured wound, through and through the muscles at the root of the right thumb.

9. 22 punctured wounds, on the back portion of the body, which were ½ cm to 2 cm broad and 4/5 cm chest cavity deep.

Head Constable Rajindra Veer Singh - P.W.7 proved the written report lodged by Ram Prakash on the basis of which chik FIR Ex.Ka-5 was written and its relevant entry is mentioned in Rapat No.5 at 5.00 a.m. on 03.02.1980. The copy of G.D. Ex.Ka-6 available on record. Sub Inspector Kanhaiya Pandey - P.W.10 is the Investigating Officer who conducted the inquest which is Ex.Ka-4 and relevant documents sketch, photolash which are Ex.Ka-11, Ex.Ka-12 and fard of the clothes, i.e. *kurta*, *baniyan* which is Ex.1 and Ex.2 and its fard Ex.Ka-13 and the alleged recovered weapon *barchi* was found adjacent to the dead body of Bhuiyandeen - its fard is Ex.Ka-14 and recovered *barchi* is Ex.12. Further this witness has proved recovery of safi, tahwan and coat from the place of *nakab* which is Ex.3 to 5 available on record and its fard Ex.Ka-15. Further this witness has proved the recovery of simple and blood stained earth; its fard is Ex.Ka-16 and the material exhibits of simple and blood stained earth is Ex.13 and 14. Letter sent for the post mortem is Ex.Ka-17. This witness has further proved that he inspected the spot and made spot plan which is Ex.Ka-18. Further this witness has stated that at the time of investigation, Ram Sakhi, wife of deceased, had given him a written report Ex.Ka-8 on the spot at the door of the accused Ram Prakash which relates to the murder of her husband. Further this witness has proved the G.D. in which the offence under Sections 457/380 I.P.C. was converted into Section 118/302 I.P.C. and its copy of the G.D. is Ex.Ka-19 available on record. Further this witness has stated that he recovered the jewellery from accused Kallu who is brother-in-law of the accused Ram Prakash from the house of Ram Prakash. Its fard is Ex.Ka-9 and recovered jewellerys are Ex.6 to Ex.10. Sub Inspector Asha Ram Tripathi -P.W.9, who after the transfer of the Investigating Officer Kanhaiya Pandey,

submitted a charge sheet against both the accused persons which is Ex.Ka-10 available on record. After completion of the prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded by the trial court. The accused persons denied the prosecution case and stated that they have been falsely implicated in this case due to enmity and partibandi in the village. Further the accused persons had not adduced any evidence in defence either orally or documentary.

We have heard Sri Hari Om Khare, learned counsel for the appellant, Shri Amit Sinha, learned A.G.A. for the State and perused the material available on record.

Learned counsel for the appellant contended that firstly motive behind murder of deceased Bhuiyandeen has not been proved in this case. Secondly identification of the recovered jewellery has not been conducted by the prosecution and thirdly if the prosecution version is taken to be true, then under the fact situation since the deceased along with two unknown persons had made a *nakab* in the house of Ram Prakash and they were armed with a weapon so the injuries inflicted to the deceased were taken to be in self defence and lastly argued that impugned judgment of conviction and order of sentence is against the weight of evidence. Offence charged under Section 302 I.P.C. against the accused persons are not established beyond reasonable doubt so appeal be allowed and the judgment of conviction be set aside and accused appellant be acquitted from the charge.

Per contra, learned A.G.A. supported the impugned judgment of conviction and order of sentence and rebutting the arguments of the appellant stated that under the conspiracy of the accused persons Bhuiyandeen was murdered by these accused appellants by enticing the deceased Bhuiyandeen from his house and in order to grab the jewellery, which was offered

at the time of marriage of one Kailash, conspired and gave it the colour of theft. This false and fabricated story of theft could not come into light. Both the accused persons had murdered the deceased Bhuiyadeen in his house with planned and arranged manner. Further contended that motive is established and the recovery of jewellery was properly identified by the prosecution witnesses and further no evidence either documentary or orally has been produced by the defence in this case. All the submissions raised by the learned counsel for the appellant have no substance. Accordingly the appeal should be dismissed.

We have considered the contentions raised by both the parties and perused the evidence and material available on record. As we have already noted that initially the complainant Ram Prakash who later on found to be accused of the case on the basis of the written report given by Ram Sakhi, wife of deceased, lodged a report of theft under Section 457, 380 I.P.C. at Police Station but on the basis of recovery and the material collected during investigation, the case of theft initially reported by the complainant Ram Prakash was converted into Sections 118 and 302 I.P.C. in which both the accused persons were charged and the prosecution tendered factual as well as formal evidence including the eye witnesses.

We have given our considered thoughts to the evidence available on record. We find that Bodhi – P.W.3, who happens to be the eye witness of the occurrence, stated before court that on hearing the alarm and noises in the house of accused he reached to the roof of his house and he saw that accused Kallu was holding the legs of deceased Bhuiyadeen and accused Ram Prakash was stabbing him with spear (barchi). Ram Sakhi – P.W.2 (wife of deceased) stated before the court that accused before the incident called Bhuiyadeen from her house. Although she and her father-in-law tried to stop deceased

Bhuiyandeen not to go with accused but since both were close friends, she could not be able to resist seriously. This witness has further stated that she heard the noises from the house of Ram Prakash but could not dare to go there out of fear and on the next day she came to know that her husband was murdered and after this she scribed a written report from one Rameshwar and handed it over to Investigating Officer on the next day of occurrence when Sub Inspector came to investigate the matter. This witness has specifically stated that in order to grab their jewellery which was illegally kept by Ram Prakash. Actually these jewellery were offered in the marriage of sister of Ram Prakash by her bridegroom but due to intervention by the first wife that marriage could not be solemnized and the same was cancelled. Further the happening of the cancellation of marriage occurred prior to three months of this incident. She further stated that the bridegroom belong to village Ata and the jewellery which was offered during marriage was unfortunately could not be finally performed actually belongs to the bridegroom. Further to add that P.W.1 Raj Bahadur Kunni stated about the extra judicial confession made to him by accused Ram Prakash in which accused Ram Prakash confessed that he was the author of the murder of the deceased Bhuiyandeen. Analysis of factual evidence reveals that PW.2 Smt. Ram Sakhi, wife of deceased, absolutely connects the accused persons with the last seen evidence with her husband Bhuiyandeen. The fact mentioned in the written report Ex.Ka-1 has been proved by this witness. The allegations made in the written report submitted by Smt. Ram Sakhi – wife of the deceased to the Investigating Officer at the place of occurrence has further been substantiated by the evidence of P.W.2. It has further been substantiated by P.W.4 Rameshwar who at least to this extent supported the prosecution version that before the incident he saw Bhuiyandeen alongwith some persons at the house of accused Ram Prakash.

The presence of the accused and the deceased Bhuiyandeen along with some others at least have been confirmed by this witness before the incident of night till at about 10 p.m. Although, P.W.4 is not an eye-witness of the occurrence but at least this fact is substantiated by the evidence that both the accused persons and the deceased at the night of incident were seen altogether in the house of accused Ram Prakash. Further this fact has also been supported by an eye witness P.W.3 Bodhi. The testimony of P.W.2 Ram Sakhi – wife of deceased Bhuiyandeen has been challenged by the learned counsel for the appellant stating that if Ram Sakhi heard the noises from the place of occurrence within the house of Ram Prakash why she did not reach on the spot at that time and further had not made any attempt to save her husband from Ram Prakash. She is deliberately concealing the criminal antecedent of her husband but we did not find any merit in this argument because the criminal antecedent of the deceased does not give any right to Ram Prakash to kill him. Further why this witness has not reached at the place of occurrence has been explained because of the friendly relation with Ram Prakash she could not able to have a doubt on Ram Prakash that he will murder her husband. The veracity of the statements made before the court, P.W.1, P.W.2, P.W.3 and P.W.4 would go to establish that before the incident accused Ram Prakash enticed away Bhuiyandeen to his house. P.W.4 Rameshwar confirmed the presence of accused alongwith the deceased and other persons before the incident.

PW-1 Shri Raj Bahadur alias Kunni, in his oral testimony on oath, has clearly deposed that accused Ram Prakash, on the second day of the occurrence, at the bus-stop at Ingohata village had confessed the murder of the deceased Bhuiyadeen. No enmity of this witness has been stated with the accused persons, and no reason has been advanced why this witness would give false evidence against the accused persons.

After the incident accused Ram Prakash had confessed his guilt before P.W.1 Raj Bahadur Kunni. Lodging of an FIR by the complainant for the theft of jewellery by the deceased along with two others at least confirmed the date, time and place of occurrence within the house of accused Ram Prakash. Further the Investigating Officer collected blood stained earth from the place of occurrence. The Investigating Officer also recovered the blood stained clothes of the deceased as well as the clothes from the place of *nakab*. The weapon *barchi* was also recovered from the place of occurrence. The presence, involvement and complicity in the commission of crime has been proved in this case with a cogent and credible evidence tendered by the prosecution. P.W.5 Dr. V.N. Mehrotra who conducted the post mortem examination of the deceased Bhuiyandeen confirmed the ante mortem injuries which show that the deceased was inflicted with the injuries by the weapon *barchi* which is sharp edged weapon and as many as nine punctured wounds have been found on the body of deceased. Fracture wounds were also found on the body of deceased. Ex facie this indicates that all the injuries were lethal in nature and it would further go to show that it was made in a planned and brutal way as per the opinion of the doctor. As per doctor the death of the deceased occurred due to haemorrhage and shock because of excessive bleeding and that was sufficient in the ordinary course of nature to cause death and probably the time of death as opined by the doctor was 2/3.2.1980 at about 12 p.m. midnight.

So far as submission of learned counsel that motive to murder Bhuiyandeen is not proved, we do not find any substance in this argument because of fact as it grows out of the prosecution evidence that about three months before the incident the marriage ceremony of the sister of the accused Ram Prakash was to be solemnized and the bridegroom belongs to village Ata, District Jalaun and the name of the bridegroom

was Kailash who under the custom had given jewellery but unfortunately due to the arrival of first wife of Kailash (bridegroom) marriage was interrupted and had to be cancelled and the accused Ram Prakash wanted to grab these jewelleries and in order to grab these jewelleries conspiracy of theft has been hatched in his mind. Bhuiyandeen who happens to be the close friend of Ram Prakash was taken into confidence and in order to give colour of theft at night a *nakab* was made inside the house of Ram Prakash and a false and concocted story of theft has been successfully lodged by the accused Ram Prakash. Under the conspiracy accused Ram Prakash and Kaloo murdered deceased Bhuiyandeen so as to suppress material evidence of the concocted story of theft. So we find that the motive and genesis as asserted by the prosecution are fully proved in this case and have been cogently established by the acceptable legal evidence. This fact further goes to establish on the recovery of jewellery from the co-accused Kaloo. All the jewellery which had been offered during the marriage ceremony from the side of bridegroom had been recovered from the house of accused Ram Prakash which he wanted to keep in other place through co-accused Kaloo. The Investigating Officer as well as the public witness of recovery has proved this fact. Nothing incriminating or adverse fact or circumstances have been shown during the argument to discredit the testimony with regard to the recovery of jewellery. Further it would be pertinent to mention that first information report of theft comes under the heavy cloud of suspicion because in FIR it is categorically stated that two unknown accused persons had run away with the jewellery which was given to the sister of the accused Ram Prakash at the time of marriage which later on cancelled due to intervention of the first wife of bridegroom. If that allegation is taken to be true then how after the incident of murder and also after the theft of jewellery, these jewelleries could be said to be

recovered from the house of accused Ram Prakash. Under these facts and circumstances since it is an admitted fact that Bhuiyandeen had been murdered on the alleged date, time and place of occurrence and the theory of theft as alleged by the accused Ram Prakash found to be concocted, fabricated and under conspiracy. The dead body of the deceased Bhuiyandeen was recovered from the house of accused Ram Prakash and there is direct eye witness P.W.3 Bodhi coupled with the last seen evidence tendered by P.W.2 Ram Sakhi wife of deceased and further corroborated with the evidence of P.W.1 Raj Bahadur Kunni before whom the accused Ram Prakash made an extra judicial confession of the murder of deceased Bhuiyandeen. It is relevant to mention that this confession was made just after the incident on the next day when the accused met with P.W.1 Raj Bahadur Kunni at the bus stop and further to add that the presence of Raj Bahadur Kunni before whom the accused made an extra judicial confession, in the mind of the accused Ram Prakash, was a person who happens to be a member of security force of the police station so it is quite natural that in order to save from the culpability from the commission of the crime he had an occasion to made extra judicial confession before this witness. So far as the contention raised by the appellant's counsel with regard to unidentification of the recovered jewellery, we are not inclined to accept this argument that non-identification and if recovered jewellery can said to be fatal to the prosecution version as it transpires from the prosecution evidence that the factum of offering jewellery at the time of marriage of sister of accused Ram Prakash has been proved by acceptable evidence of P.W.8 Baij Nath Singh who was also a witness of recovery of the jewellery from the accused Kaloo and proved Ex.9 fard prepared at the time of recovery. In his examination he had specifically and categorically stated that in the marriage of Leela (sister of accused Ram Prakash) he was

also present. The marriage party came from Village Aata, District Jalaun on 03.12.1979. The bridegroom was Kailash and the jewellery were offered in the ceremony by bridegroom Kailash but due to intervention of the first wife of Kailash marriage had to be cancelled. Since he was witness of the jewelleries on both occasion, i.e. at the time of marriage and at the time of recovery and he had identified these jewelleries which are Ex.6 to Ex.11 and further this witness has stated that after marriage being cancelled a panchayat took place with regard to the return of the jewellery to bridegroom. Lastly it has been submitted on behalf of the appellant that P.W.3 Bodhi could not be eye witness of the incident because it has come in evidence that there was no source of light except a *chulha* (hearth) was lit. This argument is not acceptable on two folds. Firstly, the eye witness P.W.2 Bodhi belongs to the same village and resident of the adjacent place of occurrence. A person of the same village could be identified by the voice or built up of the body or gesture. Thus, if there were only the embers of *chulha* as source of light, then the scene could have been very well witnessed only in a glimpse; so identification of the same village person could not be ruled out and secondly evidence has been tendered to this effect that in the light of the ember of fire the witness has identified the accused persons. On this point it is also a relevant fact that accused persons took the deceased Bhuiyandeen from his house in order to make a *nakab* to give the colour of theft of those jewelleries which had been given in a ceremony by bridegroom who belongs to another village Aata and unfortunately due to the intervention of the first wife of the bridegroom that marriage could not be solemnized and had to be cancelled and further the circumstance of the case is that a panchayat was held on the issue of return of jewellery.

To sum up the case, lodging of an FIR under Sections 457, 380 I.P.C. by the complainant Ram Prakash found to be

concocted, fabricated and under a conspiracy. The plea of right of private defence has neither been taken by the defence during trial nor any evidence to this effect has been adduced by the defence. Neither any injury was found on the body of accused Ram Prakash nor it has been proved in this case. The ante mortem injuries inflicted by the accused persons at the relevant date, time and place of occurrence found to be so grievous and serious that right to private defence although taken for the first time during the argument of appellant deserves to be discarded at the very outset. The last seen evidence tendered by the wife of deceased P.W.2 Ram Sakhi found to be believable and acceptable. The extra judicial confession of the guilt made by the accused before P.W.1 Raj Bahadur is a supporting evidence of the direct eye witness account of P.W.3 Bodhi. Cumulatively, the entire evidence led by the prosecution has proved the offence under Section 302 I.P.C. committed by two accused persons and is found to be established beyond reasonable doubt.

So far as finding of conviction under Section 118 of I.P.C. is concerned, undoubtedly forged, fabricated and concocted report was lodged by the complainant Ram Prakash who during investigation was found to be the main accused and in order to give the incident a colourful false story of theft concealing the offence of murder of the deceased Bhuiyandeen who has been taken under influence to make a *nakab* in the house and thereafter with an ulterior motive to commit the murder of Bhuiyandeen is sustainable in the eye of law. Under these facts situation offence under Section 118 I.P.C. is proved beyond any shadow of doubt against the accused Ram Prakash and the acquittal of co-accused Kaloo under Section 118 I.P.C. has been rightly recorded by the trial Judge.

On the aforesaid reasons and discussions, we are of the view that the impugned judgement of conviction and order of

sentence against accused Ram Prakash and Kaloo under Section 302 I.P.C. is sustainable in the eye of law. Accordingly, the order impugned in this appeal convicting and sentencing the accused appellant Ram Prakash is confirmed and the appeal having no force is hereby dismissed.

The accused-appellant no.1 Ram Prakash is on bail, his bail bonds stands cancelled.

The appellant no.1 is directed to surrender himself before court concerned within 15 days from the receipt of the order to serve out the remaining sentence, failing which the court concerned shall proceed against the appellant no.1 in accordance with law.

Let a certified copy of the judgment be transmitted to the court concerned for compliance.

Order Date :- 7.3.2017

Anand/-