

Court No. - 40

Case :- CRIMINAL APPEAL No. - 951 of 1988 AFR

Appellant :- Janardan

Respondent :- State Of U.P.

Counsel for Appellant :- D.S.Tiwari, A.Pal, Amit Kumar Singh, S.A.Ali, S.P.Singh, Tej Pal

Counsel for Respondent :- D.G.A.

Hon'ble Bala Krishna Narayana, J.

Hon'ble Arvind Kumar Mishra-I, J.

The arguments of this case concluded at the close of the Court hours on 24.04.2017. We then made the following order:-

"Heard Sri Amit Kuma0r Singh, learned counsel for the appellant and Sri A.N. Mulla, learned counsel for the respondent.

We will give reasons later but we make the operative order now.

*The appeal is **allowed**. Impugned judgment and order of conviction dated 18.04.1988 passed by Vth Upper Sessions Judge, Muzaffar Nagar, in Sessions Trial No.363 of 1986, convicting and sentencing the appellant Janardan to undergo life imprisonment u/s 302 I.P.C. is hereby set aside. Appellant is acquitted of all charges framed against him.*

Appellant Janardan in on bail. He need not surrender. His bail bonds are hereby cancelled and sureties are discharged. However, he will comply with the provisions of Section 437-A Cr.P.C. "

Here are the reasons:

By way of instant criminal appeal, challenge has been made to the validity and sustainability of the judgment and order dated 18.04.1988 passed by Vth

Additional Sessions Judge, Muzaffarnagar in Sessions Trial No. 363 of 1986 (**State Vs. Janardan**), arising out of Case Crime No. 119, Police Station-Charthawal, District- Muzaffarnagar, whereby the appellant- Janardan- has been convicted and sentenced to undergo life imprisonment under Section 302 IPC.

Brief facts of the prosecution case, as discernible from record, are that a first information report was lodged by informant Ratan Lal son of Chhatar Kaum Tyagi, resident of Nyamoo, Police Station Charthawal, district Muzaffar Nagar, at police station Charthawal on 21.8.1986 around 9.15 A.M. against present appellant- Janardan with the allegation that there was some dispute regarding partition of family property between nephew of informant- Krishna and grandson of informant- Janardan. Today at about 6.00 A.M. accused Janardan called his father Krishna and went inside the room. After some time, some noise/sound from inside the room echoing "Bachao Bachao" (save-save) was heard whereupon, the informant in company with other persons (Rahatu, Sewaram, Ramnath and nephew Uday Singh) immediately rushed to the spot, where they saw Janardan running away through the door of the room possessing sharp edged weapon in his hand. On reaching to the place of the incident, they noticed neck of Krishna cut with incised wound due to which there was bleeding and Krishna had expired. It was asserted that informant's nephew has been killed by

his son Janardan. The dead body is lying on the spot. Report be lodged and action be taken.

Contents of written report were taken down in the check FIR at police station- Charthawal on 21.8.1986 at 9.15 A.M. under section 302 I.P.C. at case crime no. 119 of 1986. Check FIR is exhibit Ka.-15 and relevant entries in G.D. were also made and case was registered. General Diary entry is Exhibit Ka.-16. Pursuant to this information, investigation took place which was taken over by Kunwar Pal Verma P.W. 7. The inquest report was also prepared by S.I. Ramesh Chandra Chaudhary P.W. 4 on 21.8.1986 and he accompanied the Investigating Officer to the spot of incident and prepared the inquest report under the supervision of the Investigating Officer. In the inquest report, opinion was expressed for conduction of post-mortem for ascertaining the real cause of death, therefore, inquest report was prepared and the dead body was sent for post mortem examination. Inquest report is Exhibit Ka.-2 and other relevant papers are photo nash, challan of dead body, letters to the concerned Chief Medical officer, Reserve Inspector are Exhibit Ka.-3 to Exhibit Ka. 6 respectively. The Investigating Officer inspected the spot and prepared spot map, Exhibit Ka.-10. Besides, he also recorded the statement of various witnesses and during the course of investigation, on 25.8.1986, he recovered dibber (Khurpi) from the residence of appellant and proved recovery of dibber as material

Exhibit Ka.-3. The memo of recovery was also prepared vide Exhibit Ka.-7. Simple and blood stained earth was also collected from the spot and memo was prepared vide Exhibit Ka.-8. The spot from where the dibber was recovered has been shown in the site plain vide Exhibit Ka.-11.

After completion of investigation, charge sheet Exhibit Ka.14 was submitted against the appellant. Thereafter, the case of the appellant was committed to the court of Sessions Judge, who heard both the sides on point of charge, and after being satisfied that prima facie case against the appellant is made out, he charged him under section 302 I.P.C. and the charge was read over and explained to the accused, who abjured the charge and claimed to be tried, whereupon, the prosecution was asked to adduce its testimony. In turn, the prosecution produced 7 witnesses of fact, whose sketch is being narrated herein below.

Ram Singh P.W.-1 is constable who took the dead body to the mortuary and has proved the factum of conveying the dead body up to mortuary. Ratan Lal P.W. 2 is informant in this case and has lodged the written report. Sewa Ram P.W.-3 is eye-witness of the incident. Ram Chandra Chaudhary P.W. 4 has prepared inquest report under the supervision of Investigating Officer Kunwar Pal Verma P.W. 7 on 21.8.1986. Rakesh Kumar P.W. 5 is witness of fact of recovery of 'dibber' at the pointing out of accused on 25.8.1986 and has proved Exhibit Ka.-7 memo of

recovery. Dr. B.K. Agarwal P.W. 6 conducted the post mortem examination on the cadaver of deceased. Kunwar Pal Verma P.W. 7 has detailed the spot investigation of this case and has proved charge sheet Exhibit Ka.-14.

Thereafter, the evidence of the prosecution was closed and the statement of the accused was recorded under section 313 Cr.P.C., wherein he has claimed to have been falsely implicated. He has denied any recovery having been made on his pointing out and he has also submitted in reply to question no. 10 that informant- Ratan Lal, deceased- Krishna (nephew of informant) are related to each other. Ratan Lal is uncle of Krishna (deceased) and dispute regarding partition of property was going on between them because of agricultural field. Due to aforesaid fact, some scuffle/marpeet had already taken place between the appellant and informant Ratan Lal. Due to aforesaid enmity, the appellant has been falsely implicated. Leg of appellant's son Monu had been broken two days earlier to the incident. His treatment was going on in Mukesh Jain Hospital and the appellant had gone to take him back to his house Chudiyala and was not present on the date of the incident in the village.

The defence has led ocular testimony in the form of Raj Kumar D.W.-1 who has testified on the point that the appellant was present at Chudiyala and was arrested from there on 22.8.1986 by the police and entire property of the appellant and

informant side has not been partitioned as yet. No other testimony was adduced, thereafter the evidence for the defence was closed and arguments were heard and after considering entire facts and circumstances of the case and evaluation of evidence on record, the trial court recorded finding of conviction and sentenced the appellant to imprisonment for life, as a result of which, the instant appeal has been preferred before this Court.

Heard Sri Amit Kumar Singh, learned counsel for the appellant and Sri A.N. Mulla, learned counsel for the respondent.

It has been succinctly claimed on behalf of the appellant that the entire case is fabricated one and the accused has been wrongly roped in, in this case just because the informant was having ill-will and grudge not only towards the deceased, but also against the present appellant on account of fact that the partition dispute in ancestral property was going on between the family of the appellant - which includes the deceased and the informant side. Admittedly, relationship (of nephew and uncle) exists between the deceased and the informant. There was no occasion for the appellant for claiming partition of his property with his father. Motive for killing his own father by the appellant is absolutely vague and baseless and has been devised to falsely implicate the appellant. The testimony of all the witnesses of fact is varying and vacillating apart from being contradictory. The

recovery of 'dibber' can never be expected to be satisfactory in view of testimony of prosecution witnesses of fact that they saw the dibber lying on the spot at the time of occurrence and the dibber was taken away by Darogaji and imputed recovery of this dibber on 25.8.1986 on the appellant which is indicative of fact that the informant is hand in glove with the Investigating Officer. Even ocular testimony regarding the incident is grossly contradictory. One witness states about the manner of assault being caused by the appellant whereas another says that the appellant was seen running away from the place of occurrence. However, the first information report does not include any such description like the manner of assault being caused on the deceased by the appellant and ever being witnessed by the prosecution witnesses in any particular manner as testified before the trial court. The first information report is outcome of malice. The informant had an eye on the property of father (deceased) of the appellant and with that design he has tried to remove father of the appellant and has deliberately roped in the appellant in order to save himself. Motive for committing murder of father of the appellant was to the informant himself and not to the appellant. The trial court failed to notice the actual merit of the case and erred in convicting the appellant. The trial court instead of exonerating the appellant of the charge under section 302 I.P.C. has erroneously

convicted him.

In reply, also learned A.G.A. has submitted that in this case eye account testimony of witnesses of fact establishes beyond reasonable doubt that the offence was committed by the appellant alone. Therefore imputation of motive occupies subordinate position and it cannot be said that motive suggested is absurd because the appellant was claiming partition of property from his father. The recovery of dibber has been proved reasonably by the Investigating Office and also by another witness. Contradictions are bound to occur in the testimony of eye witnesses and they are not expected to be pictorial description of the incident, but these contradictions are not grave. After considering the entirety of the case, the trial court was justified in recording finding of conviction and has passed just sentence.

We have also considered the rival submissions.

In the wake of rival claim, the moot point that arises for adjudication of this appeal relates to the fact as to whether the prosecution has been able to prove its case beyond all reasonable doubt against the appellant?

While scrutinizing the record and particularly evaluating the testimony of prosecution witnesses of fact, certain grave anomalies, which cannot be overlooked and need to be discussed at this juncture, need be addressed to by this Court. As per

the first information report, it is gathered that on the day of occurrence i.e. 21.8.1986, the incident took place around 6 A.M. and the report was lodged shortly afterwards at 9.00 A.M. the same day. This report is silent about the presence/whereabouts of other family members of deceased Krishna who were none other than wife and children of Krishna but in the testimony of Investigating Officer Kunwar Pal Verma P.W. 7 in his cross examination, he has admitted fact that at the time of his arrival on the spot, he did not find any eyewitness, but, he later on, called these eyewitnesses (of this case) on the spot, and it has further been testified that the Investigating Officer did not record any statement of eyewitnesses of this occurrence on or prior to the preparation of the inquest report because the witnesses were not available and this testimony culminates into expression that on that day i.e. on 21.8.1986, no eyewitness was available. This by itself is indicative of fact that even, the informant was also not available and it throws doubt on the whereabouts of informant Ratan Lal P.W. 2 at the relevant time when the I.O. arrived on the spot and up to the time when inquest was held.

Not only this, from perusal of the cross examination of the Investigating Officer, Kunwar Pal Verma P.W. 7, it has also emerged on page - 43 of the paper book that he found wife and children of the deceased on the spot, but he did not find wife and children of the accused on the spot. Further

perusal of list of witnesses described in the charge-sheet reflects that the name of the wife of the deceased does not find mention as one of the witnesses and in his statement, the accused has submitted that in fact leg of his little child was fractured and he was given treatment in Mukesh Jain Hospital Muzaffarnagar and he had gone to attend his son and this sort of testimony has been specifically given by Raj Kumar D.W.1. He has testified in examination in chief that on 20th (20.8.1986) the applicant had visited his home to take back his sister (Raj Kumar's sister) in village Chudiyala and police arrested Janardan from village Chudiyala on 22nd (22.8.1986) and this witness further testified on page 51 of the paper book in his examination in chief that the informant had four brothers and their property was jointly possessed by all and there was dispute between Ratan Lal and Krishna in which Janardan used to side/favour his father. This specific piece of testimony as emerging in examination-in-chief of Raj Kumar D.W.1 regarding presence of Janardan being in village Chudiyala and his arrest by the police on 22.8.1986 and fact of property of deceased being jointly possessed by all the brothers has not been put to any challenge in cross examination by the prosecution even in the least. Therefore, the testimony of D.W.1-Raj Kumar on there factual aspects may be construed as unchallenged and unassailable - and to be read, to all intents and purposes in favour of the accused-

appellant.

Now point is as to how and why, a vital witness wife of the deceased- Krishna- was not examined, who would have been best witness for proving motive behind the crime that Janardan used to insist to retain his share of the property and on account of that enmity he killed his father. But motive imputed for killing has not been proved consistently by the prosecution. Mere statement by the prosecution witnesses that Janardan killed his father (Krishna) after his refusal for partitioning his share would not be acceptable in view of unassailable testimony of D.W.-1 Raj Kumar to the ambit that the property in question was jointly possessed by the deceased along with his brothers. Once the entire property was jointly held by 3-4 brothers then demand of partition of that property by the accused Janardan from his father becomes absurd and the same cannot be taken to be correct factual position. However, this case, being one of eye account testimony, motive shall be relegated to the background and the eyewitness account shall be given supremacy. On that count, two testimony of the eyewitnesses, particularly P.W.1-Ram Singh, P.W. 2-Ratan Lal and P.W. 3-Sewa Ram are grossly contradictory on fact.

Perusal of the first information report describes the occurrence in a manner that at the time when informant Ratan Lal P.W.1 saw the accused, he was fleeing away through the door of the room possessing sharp-edged weapon, after coming out from

the door of the room. But, all the three witnesses did not enter inside the room while occurrence took place and they claimed that they watched the occurrence inside as well as outside. Testimony of P.W.3- Sewa Ram has come forth to the effect that he saw the occurrence after arrival on the spot when he watched that Janardan was sitting upon the chest of Krishna and was causing dibber blow on his neck and he escaped from the scene after seeing them and throwing the dibber on the spot.

Now, the testimony of P.W. 2 Ratan Lal is to be evaluated. His testimony categorically claims that when he arrived on the spot, he saw the accused Janardan running away from the scene after coming out of the room and when he entered into the room, he found Krishna dead on the spot with profuse bleeding, therefore, testimony of Sewa Ram P.W.3 is in direct contrast to testimony of P.W.2 Ratan Lal. It is admitted fact that all these three witnesses rushed to the spot at the same time when the incident allegedly took place.

Besides, this witness (P.W.2) has also testified in cross examination at page - 22 of the paper book that the accused was arrested after one or two days of the incident from village Chudiyala. He submitted that he could not identify weapon. It means that the testimony of D.W. 1 Raj Kumar that the accused was arrested from village Chudiyala on 22.8.1986 is absolutely correct version. This witness (P.W.2) is highly motivated witness and his testimony does not

inspire confidence because he had direct motive to implicate falsely the accused because of testimony of D.W.1 is unimpeachable and unassailable on the point that there was property dispute between Ratan Lal and deceased Krishna and accused sided with his father. Not only this, collusion of the informant with the police also has been exposed by testimony of P.W.1 itself on page 23-24 of the paper book that at the time of arrival of Darogaji, he accompanied Darogaji, went upto to the spot where the dead body was lying and dibber was lying and where the dead body was picked up by Darogaji in his presence and same was sealed the same day by Darogaji and he had told this fact to Darogaji in his statement.

Thus, it is obvious that dibber was also plotted in the scene to give thrust to the claim of the informant that this was the weapon, which was used in the commission of the offence. This specific piece of testimony that dibber was lying on the spot finds corroboration from the testimony of Sewam Ram P.W.3 when he testified in his examination in chief that the accused after seeing him threw away dibber on the spot and fled away from the room/house. Thus, this testimony is in particular contrast to the testimony of both P.W.5 Rakesh Kumar a witness of fact of recovery of dibber that it was so recovered at the instance of accused Janardan and the testimony of P.W. 7 Kunwar Pal Verma that the accused was arrested on 25.8.1986 and dibber was recovered at his instance same day from his house.

It has also emerged in the testimony of P.W. 2 Ratan Lal that from the date of occurrence, the accused had fled away from the scene, he never visited his home till his arrest, then how can dibber be concealed in the house, how can it be recovered by the Investigating Officer from the house. Thus, factum of recovery of dibber at the instance of accused becomes a riddle to be solved. This by itself shows that the investigation was also not properly conducted. Assuming it to be that sharp edged weapon was recovered by the police on 25.8.1986, then another anomaly surfaced in the testimony of doctor witness B.K. Agrawal P.W.6, who in his cross examination in the very last line of paragraph on page 38 of the paper book has categorically stated that edge of both sides of dibber are twisted by thickness and the same cannot be said to be sharp edged. If it is so, how can it be believed that it was the same weapon which was used in the commission of offence and recovered at the pointing out of the accused.

Admittedly in face of unimpeachable testimony of D.W.1 Raj Kumar, it is obvious that the informant P.W.2 Ratan Lal was highly motivated and he had specific reason to falsely implicate Janardan so as to remove him from his path by eliminating Krishna. A suggestion has been given by the defence that Krishna was killed in the night and in order to grab the property of accused and Krishna, informant deliberately involved the accused, whereas the fact

is that the accused had no motive, whatever, to commit the offence against his own father. Why the wife of deceased not arrayed as a prosecution witness also assumes greater significance and pointing out to the innocence of the accused.

Upon analysis of facts and circumstances of the case and evaluation of testimony on record, it appears that there are material contradictions in the testimony of prosecution witnesses on vital facts, which reflect that prosecution has failed to establish guilt of the accused and the evidence is shaky and unworthy of credit. On overall scrutiny, it appears to be a case of no evidence against the accused. So far as trial court is concerned, it did not thoroughly examine the aforesaid particular factual and legal aspects of the case and failed to evaluate properly the testimony of the prosecution witnesses of facts as well as testimony of doctor witness Dr. B.K. Agarwal P.W. 6 and erroneously recorded finding of conviction of the appellant under Section 302 IPC, thus passing sentence against him which finding of conviction and sentence is vitiated for the aforesaid reasons.

These are the reasons upon which we set aside the impugned the judgment and order dated 18.04.1988 passed by Vth Additional Sessions Judge, Muzaffarnagar in Sessions Trial No. 363 of 1986 (**State Vs. Janardan**), arising out of Case Crime No. 119, Police Station-

Charthawal, District- Muzaffarnagar.

Let a copy of this order/judgment be certified to the court below for necessary information and follow up action

Order Date :- 24.04.2017

Iss/