



2026:AHC:164140-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2738 of 1987

Bachhu Singh

.....Appellant(s)

Versus

Lal Sahab Singh

.....Respondent(s)

Counsel for Appellant(s) : , Saiful Islam Siddiqui, Ali Hasan, Saiful Islam Siddiqui (A.C.)

Counsel for Respondent(s) :

Court No. - 42

HON'BLE ATUL SREEDHARAN, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

1. Present appeal has been filed by the appellants, who are aggrieved by the judgment of conviction and sentence dated 20.11.1987 passed in Sessions Trial No. 68 of 1987 (State Vs. Bachnoo Singh and others), whereby the appellants were tried and convicted in a case of double murder and sentence to suffer rigorous imprisonment for life under Section 302/34 of IPC on two counts, one for the murder of Uma Shankar and the other for the murder of Babau. They were also to suffer seven years of rigorous imprisonment under Section 364 IPC and three years of rigorous imprisonment for the offence under Section 201/34 IPC on two counts, one relating to the disposal of the dead body of Uma Shankar and the other of Babau. All the sentences were to run concurrently.

2. The brief facts of the case are that PW-1 Srineth, the son of Ramavatar Musahar, resident of Village Sarai Bikram, which comes under Police Station Barsathi, District Jaunpur, handed over a written complaint (Ex. Ka-1) to the police at Police Station Barsathi on 21.02.1987 at 10.30 am, disclosing that on the intervening night of 20-21 February, 1987 at about 8 pm, the accused Bachnoo Singh, Zileadar Pandey, Rambhuvan Singh, Bagai @ Jilajeet Yadav came to the Dera of the informant and forcibly took away Babau and Uma Shankar Musahar in the presence of Guge, Smt. Chamela

(PW-2), Smt. Piyari (PW-3). The informant is PW-1, who states that his family members forbade the accused persons from taking away the deceased but they did not listen and instead gave life threats to the PW-1 and his family and also to their property. In the complaint (Ex.Ka-1), it is also disclosed that the accused persons were demanding Rs. 1000/- which the victims refused to pay and therefore, the accused persons took away the victims with them. It is relevant to mention here that the 161 Cr.P.C. statement of PW-1, PW-2 and PW-3 were recorded on 21.02.1987 itself. Thereafter, the bodies of the aforementioned deceased persons were recovered from a well on 22.02.1987. After recovery of the bodies, the same were sent for the postmortem and both the bodies disclosed multiple stab and incised injuries caused by sharp edge weapons and the said postmortem reports have been proved as Exhibit Ka-5 and Ka-6.

3. Sri Saiful Islam Siddiqui, learned Amicus Curiae, who has been appointed by this Court to argue this matter on behalf of the appellants herein, at the very outset, brought to the notice of this Court that one of the appellants has passed away during pendency of the appeal (appellant no.2- Zileadar Pandey) and therefore, the appeal stands abated against the said appellant. As regards the others, learned Amicus Curiae has argued that the appellants have falsely been implicated in this case and there is no eye-witness testimony to establish the murder of the two deceased persons by the appellants. One of the appellants has also set up a casual defence that on account of an enmity that he had with a third person, the witnesses were influenced by the third person to falsely implicate the appellants herein.

4. Learned counsel for the appellants has said that the core of the prosecution's case is that the appellants forcibly took away the deceased persons from their home to which the PW-1, PW-2 and PW-3 are witnesses. He further submits that the evidence of last seen together is weak as the bodies of the deceased have been recovered more than 24 hours, after they were allegedly taken away by the appellants. Learned counsel for the

appellants has read through the evidence of PW-1, PW-2 and PW-3 and has impressed upon this Court on the basis of several minor discrepancies as to why their statements are not believable. It was also stated that by the learned counsel for the appellants that these witnesses have stated that the appellants were armed with sharp edge weapons and firearms, but they have not stated so in their first information report. Therefore, the confrontation of the maker of the first information report, who is PW-1 goes to falsify his statement in Court that these appellants were armed when they entered the house.

5. Learned Amicus Curiae has also referred to the scribe of the first information report, who is a blacksmith to whom PW-1 says he went and from whom the complaint was written down, which was handed over to the police on 21.02.1987. Learned Amicus Curiae has also referred to that part of the cross-examination of PW-1, when PW-1 says that the scribe of the first information report, the blacksmith, wrote the complaint in his own words and as per what he thought was correct. In other words, it has been impressed upon this Court that the complaint that was handed over to the police on 21.02.1987, on the basis of which the first information report was registered, was not in the words of PW-1 and that it was a piece of fiction written by the blacksmith, who was never examined as a witness.

6. As regards the injuries found on the body of the deceased, learned counsel for the appellants submits that no weapons were ever seized from the appellants herein, which would reveal that corresponding injuries on the bodies of the deceased could have been caused by those weapons. Under the circumstances, there is nothing to connect the appellants having caused the injuries on the deceased.

7. Per contra, Ms. Divya Ojha, learned AGA has submitted that the prosecution has been able to prove the case beyond reasonable doubt. She has argued that the first information report was registered on 22.02.1987 at 10.30 am while the incident took place in the intervening night between 20-21 February, 1987 at 8 pm, where the appellants had taken away the

deceased. In other words, learned AGA has submitted that there is no delay in registration of the first information report. She has also argued that it is pertinent that the said first information report was registered for abduction of the two deceased persons, which reflected the genuineness of the first information report as the dead bodies were not recovered at the time when the first information report was registered. Besides, learned AGA submits that the first information report has recorded the names of the appellants herein as the one's who took away the deceased persons.

8. Further, learned AGA submits that the last seen evidence would squarely apply because the abduction was reported to the police immediately after the appellants had forcibly taken away the deceased and thereafter, the very next day after the registration of the first information report, the bodies of the deceased persons were recovered. Under the circumstances, learned AGA submits that it is for the appellants to explain if they are innocent as to where they had left two deceased persons and in whose company they had left the two deceased persons and the said fact had to be proved by the appellants and not by the prosecution.

9. As regards the aberrations in the statements of PW-1, PW-2 and PW-3, learned AGA has submitted that the said witnesses are rustic persons, illiterate and coming from the lowest strata of the society, both financially and socially, and therefore, any minor aberrations in their statements are natural, which only goes to fortify their statements on the core issue of the deceased being taken away by the appellants, which has not been controverted in cross-examination.

10. As regards the statement of PW-1 and cross-examination, where he states that the blacksmith had on its own written the complaint and given it to the PW-1 is concerned, learned AGA submits that the same must be appreciated on the backdrop of the conversation that takes place in the village and dialect in which the conversation takes place. In other words, she has submitted that after PW-1 gave the blacksmith the broad contours of the

factual aspects of the case, the same were put in a comprehensible form in the complaint by the blacksmith. However, according to her, the same does not go to dilute the case against the appellants as what has been stated in the first information report relates to the abduction of the deceased by the appellants, which has been proved by PW-1, PW-2 and PW-3 in their court testimonies.

11. As regard the non-seizure of the weapons related to the offence, learned AGA has submitted that the same is not always fatal in every case and more so in a case like the present one where the deceased has been taken away in the presence of PW-1, PW-2 and PW-3 to which they have testified and have also stated the nature of weapons being carried by the appellants. Amongst the weapons mentioned by PW-1, PW2 and PW-3 are also sharp edge type, which the learned AGA has submitted are capable of causing all the injuries found on the body of both the deceased persons. It is further stated that its a natural instinct for the criminal after committing a crime to dispose of or get rid of the article used to commit the crime and therefore, its non-seizure cannot be said to be fatal in every case. In this case, as regards the motive for the incidence, learned AGA has submitted that the appellants had demanded the payment of Rs. 1000 from the deceased persons and on their refusal to pay the same, they were taken away by the accused persons. She has further stated that Rs. 1000 was demanded to defray the expenses incurred by the appellants in settling an offence with the deceased, which disclosed prior enmity.

12. Heard learned counsel for the parties and perused the learned Trial Court's record.

13. In this case, the core of the prosecution's story is the abduction of the deceased persons on the intervening night of 20-21 February, 1987, which happened in the presence of PW-1, PW-2 and PW-3. PW-1 has sought to be contradicted on the basis of his first information report where the learned Amicus Curiae has submitted that there was no mention of the appellants

being armed when they entered the house. However, going through the 161 Cr.P.C. statement of PW-1, which was recorded on 21.02.1987 itself at around 12 pm, he has stated so in the said 161 statement. However, this Court is not relying upon that for corroboration but only for the purpose of showing that the defence never confronted the PW-1 with his 161 statement. As regards the argument put forth by the learned Amicus Curiae that this fact is missing in the first information report, it is settled law that the first information report is not a compendium or an encyclopedia of the entire prosecution's case. It is only to disclose the commission of a cognizable offence to enable the police to commence the investigation. Therefore, it is clear that what PW-1 has stated in his examination-in-chief, was not an omission in the 161 statement else the witness would have been confronted with it.

14. The fact that the appellants were armed has also been corroborated by PW-2 and PW-3, who are also witnesses to the abduction of the deceased persons by the appellants herein. These witnesses have also not been contradicted on the material particulars relating to the abduction.

15. As regards the arguments put forth by the learned Amicus Curiae appearing for the appellants that a long period passed between appellants being last seen in the company of the deceased and the recovery of the bodies of the deceased. Here this Court feels it essential to chalk out the difference between "last seen in the company" and "last seen in the custody". The difference though appears to be minor is real. When a person is last seen in the company of another, it shows an element of voluntariness on the part of the deceased, who was last seen in the company of the suspect as there was no coercion. However, last seen in the custody of the accused has a different connotation altogether. It goes to reflect that the deceased, who was last seen in the custody of the accused did not have the liberty or free will of movement and he was under constraint as far as his liberty to go anywhere as he pleases. In such a situation, where a person is last seen in the custody

of the accused as in the present case, Section 106 of the Evidence Act would come into play more so where the body of the deceased are recovered after they were last seen in the custody of the accused persons. In such a situation, it would be for the defence to establish as to where they released the deceased persons, and there must be some evidence to that effect of others having seen the deceased having been released by the appellants, who held them in the custody and the deceased having moved away from the proximity of the accused persons. This so because once the victims are taken into forced custody by the appellants, what happened to them is exclusively in the knowledge of the appellants and no other person.

16. The appellants have not produced any evidence to set up a parallel hypothesis showing that they were ever released from their custody, so as to create a doubt that there was an intervening incident between appellants releasing the deceased and their bodies that were found which could make the Court apprehend that may be someone else could have committed the crime. No such material exist as far as the present case is concerned.

17. It is also necessary to mention here with regard to the strata of the society from which the witnesses came from. In that regard, this Court feels it necessary to reproduce verbatim a part of the testimony of PW-3 Smt. Piyari with regard to the weapons she had seen being carried by the appellants where she states "मुल्जिमान हाज़िर अदालत मेरे डेरे पर आये यह लोग चाकू व हथियार जिसमे गोली भरा रहता है लिये थे ". The level of knowledge of the prosecution witness is glaring, as she does not even know how to describe a firearm either by calling a firearm a tamancha or a pistol or a revolver. Instead she describes it as a weapon into which shells are inserted.

18. Therefore, this Court holds that the prosecution has been able to prove the case against the appellants beyond reasonable doubt. The appeal is dismissed. The appellants shall surrender before the learned Trial Court, which shall send them to prison to complete the remaining part of their sentence. In the event, they do not surrender, the learned Trial Court is

requested to resort such coercive proceedings to secure their presence and send them to prison.

19. The Court wishes to record its appreciation for the efforts put in by Sri Saiful Islam Siddiqui, learned Amicus Curiae and ask the Legal Services Authority to ensure that he shall be paid Rs. 25,000/- for his assistance to the Court.

August 5, 2026
Noman

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