

Fakhruddin Vs. State

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Court : Allahabad

Decided On : Sep-07-2012

Judge : Imtiyaz Murtaza & S.I. Surajpal Manoj

Appeal No. : Criminal Appeal No. 1276 of 1982

Appellant : Fakhruddin

Respondent : State

Judgement :

S.I. Surajpal Manoj, J.

1. Both the criminal Appeals have been preferred assailing the judgment and order dated 15.5.1982 passed by Addl Sessions Judge Bulandshahare in S.T. No 160 of 1981 whereby the appellants have been convicted for offences under section 396 IPC and each of them have been sentenced to undergo R.I. for 10 years. It would transpire from the record that initially accused Fakhruddin, Nizamuddin , Prem, and Rohtash and Khurshid were committed for trial. The trial has its genesis in the FIR lodged by the complainant Dori Lal Gupta of village Amargarh District Bulandshahre and consequential investigation conducted by the local police of PS Jahangirabad. Mentioning background, the complainant alleged that two days prior to the occurrence, accused Fakhruddin, a native of the same village, had come to his shop and demanded cigarette on credit which request was declined. It is further alleged that in the meanwhile, the younger brother of complainant

happened to be at the shop and there was heated exchange followed by scrimmages between the two. However, the people of the village intervened and both the horn-locked persons were separated from each other. It is further alleged that thereafter, accused Fakhruddin left the scene threatening with dire consequences. Narrating the events of the day of occurrence, it is alleged that on 6.9.1979, while the father of the complainant were asleep on the terrace of the roof and other family members were asleep in the rooms on the second floor of the house, 10-12 persons gained entry into the house and demanded key of the safe threatening the family members with serious consequences. It is further alleged that he was awakened by his father. They screamed for help upon which village people were attracted and they came out armed with respective weapons. It is also alleged that having heard the hue and cry, two police personnel who were on patrol duty were also attracted to the scene of occurrence and they challenged the accused persons, In the meanwhile, it is further alleged, three of the miscreants went up the roof and forcibly took his father down the stairs demanding key of the safe. It is also alleged that after initial fisticuffs between the miscreants and the complainant side, in the melee, the faces of the bandits which were muffled, came loose and amongst them, they recognised accused Fakhruddin, his brother Nizamuddin, Prem and Jasmant Dada. The remaining accused persons were also recognised by them but being unknown, it is alleged, they could be identified if paraded before them. It is also alleged that when he saw scuffle between his father Ramesh Chandra and brother Suresh on one hand and the accused persons on the other hand, he escaped from the back of the house and screamed for help. It is also alleged that there was exchange of fire between the policemen and the bandits but the bandits escaped while firing in which his father Ramesh Chandra and brother Suresh and as many as 14 other village people sustained fire arm injuries. It is alleged that in the incident, his brother Suresh breathed last on the spot while his father was taken to hospital in serious condition.

2. The investigation of the case was conducted by SO K.P.Singh of PS Jahangirabad and after visiting the spot he completed all the formalities. It is stated that the SO during investigation was tipped that the accused persons would collect at the tubewell of Rohtash near village Chandiyana for distributing the looted valuables, and upon receipt of information, he laid siege to the place and

arrested the accused persons namely Rohtash and Khursheed from whom valuable articles and transistor were recovered on 8.9.79 at 11 am. Subsequently, the identification parade was arranged. After completing investigation, the investigating officer submitted charge sheet in the court. The defence version abjured the guilt submitting that they have been falsely nominated in the case on account of enmity. Each of the accused gave their respective reason for false implication. The trial culminated in the conviction of appellants Fakhruddin, Nizamuddin and Prem for offences as aforesaid while accused Khursheed and Rohtash were given clean acquittal.

It is stated across the bar that accused Prem died during pendency of appeal and therefore, the appeal preferred by him stands abated. The appellant Nizamuddin is represented by Sri Vipul Mishra, Advocate while appellant Whereabouts of Fakhruddin are reportedly not known. Sureties of Fakhruddin were also reported to be dead. The only appellant that is represented in this court is Nizamuddin. In the facts and circumstances of the case, I have appointed Sri Vipul Mishra, counsel appearing for Nizamuddin as Amicus-curiae to represent appellant Fakhruddin. The prosecution in order to substantiate its case, examined in all 14 witnesses out of which PW 1 is Dori Lal, PW 2 is Km Shashi daughter of Dori Lal, PW 3 is Smt Lilawati wife of Dori Lal and PW 4 Ghan Shyam who have claimed to be ocular witnesses of the occurrence. The remaining witnesses are formal witnesses namely PW 5 Special Judicial Magistrate, PW 6 Const Vikram Singh, PW 7 HC Manohar Singh, PW 8 HC Jagdish Singh, PW 9 S.I. K.P.Singh, PW 10 Dr Banwari Lal, PW 11 Dr R.C Sharma, PW 12 S.I.Riyaz Hasnain, PW 13 Const Gayasuddin, and PW 14 The main brunt of arguments advanced across the bar is that the accused persons namely Fakhruddin, Nizamuddin, Prem and Jaswant Dada were known persons belonging to the same village, and they cannot dare to commit dacoity even with faces covered attended with submission that the accused persons namely, Fakhruddin and Nizamuddin had no criminal antecedents. The second argument advanced by the learned counsel for the appellants is that no recovery is said to have been made from the possession of the appellants represented by him. Thirdly, it is argued that no independent witness has been examined to substantiate the prosecution case and the witnesses examined are all highly partisan witnesses while according to the own case of the prosecution as

many as 15 persons also sustained fire arm injuries in the encounter with the bandits. Lastly it is argued that the motive alleged is too feeble and cannot be said to be proximate to have induced the appellants to commit the dacoity in a house of a known person.

In so far as first argument is concerned, there is no denying of the fact that the appellants being native of the same village were known to the complainant and his family. Everyone of the witnesses have deposed that the appellants were known to them being native of the same village. The further argument that known persons would not make bold to commit offence of the nature in the house of a known person, does appear to have substance if it is analytically view in the context of allied facts on record. No strong motive has been bandied except saying that 2 days prior to the occurrence, there was heated exchange of words followed by scuffle between Fakhruddin and Suresh at the shop. In the FIR, Nizamuddin is not mentioned to be present at the shop on the occasion. When PW 1 Dori Lal was confronted with the version of the FIR, he explained that he had forgotten to mention his name in the FIR. It is argued that Nizamuddin has been nominated in the case on account of enmity with Fakhruddin and also on account of his being full blooded brother of Fakhruddin. My attention has also been drawn to the fact that the appellants have no criminal antecedents to their discredit. Further no recovery is said to have been made from the possession of the accused Nizamuddin and accused Fakhruddin. By this reckoning, the submission does have force that the appellants have been falsely nominated in the case. No incriminating evidence suggesting any role played by the appellants has been brought forth save saying that during scuffle in the course of dacoity, the faces which were covered came loose and the accused persons including appellants were recognised. The accused persons are said to be variously armed and it has come in the evidence of the complainant that the accused persons while escaping had fired in which two persons were injured out of whom Suresh brother of the complainant died instantaneously while Ramesh Chandra, father of the complainant suffered fire arm injuries. The story of scuffle and uncovering of face, it is reasoned, has been invented to lend cogency and to prop up the failing prosecution case. It is further reasoned that in fact, the assailants were unknown persons and none of them were recognised and in the course of dacoity and,

when the deceased Suresh and Dori Lal resisted, they were fired at. The submission of the learned counsel appearing for the appellant appears to be probable. It is worthy of notice here that it has come in the evidence of PW 1 Dori Lal who also happens to be the author of the FIR that there was exchange of fire between the police personnel and village people on one hand and the bandits on the other hand, in which Suresh and Dori Lal received gun shot injuries. Suresh died on the spot. The other villagers who received gun shot injuries are Tale, Ram Prasad, Chander Pal, Kalua, Girraj, Bhagwan Prasad, Kunwar Sen, Mahavir Singh, Dharam Pal, Shri Pal, Bhure, Murari Lal, Revati and Tej Singh whose injury reports are on record marked as Ex Ka 20 to Ka 33. None of the injured except Dori Lal have come forward to depose in the case. There is no explanation why the villagers who had actively participated in challenging the bandits and had sustained fire arm injuries in the incident, were not examined or produced to support the prosecution case. Even Ramesh father of the deceased Suresh has not come forward to depose in the case. The next contention is that no independent witness has been examined and the so called ocular witnesses are the interested and highly partisan witnesses. As stated supra, PW 1 Dori Lal is the complainant of the case, PW 2 Km Shashi is the sister of Dori Lal, PW 3 Leelawati is the mother of the complainant and Ghan Shyam PW 4 is the uncle of the complainant.

3. It is well settled by a catena of decision that that while appreciating the evidence of the witnesses related to the deceased, having strained relations with the accused party, their evidence cannot be discarded solely on that basis but at the same time the court is required to carefully scrutinize it and find out if there is scope for taking view whereby the court can reach the conclusion that it is a case of false implication and whether the evidence inspires confidence or not. All that is required by the court is that the court has to weigh such evidence whether or not there are discrepancies in the evidence, whether or not evidence strikes the court as genuine, whether or not the story disclosed by the evidence is probable. It is settled in law that where relatives or interested witnesses are examined, the court has a duty to analyze the evidence with deeper scrutiny and then come to a conclusion as to whether it has a ring of truth or there is reason for holding that the evidence is biased Upon scrutiny of the evidence on record, it would transpire that

all the witnesses have in unison stated that they had recognised the bandits in the light emanating from a burning lantern and also it being moon lit night and that some of the bandits had their faces covered and on account of uncovering of the faces in the scuffle, they had recognised the accused persons. This story set up by the appellant does not commend to me for acceptance for the reason that in all, Dhata of all the accused are said to have fallen down. There is an illuminating decision of this Court which is Dadua v State reported in All India Criminal Cases 1970 p371. The excerpt of relevant portion of the said decision in para 19 being germane to the controversy involved in this appeal are quoted below.

"I can understand one Dhata, falling, two Dhatas falling, but to say that the Dhatas of all the known people fell down at one time is something which passes my comprehension. The known people had tied Dhatas on their faces with a purpose that purpose was to conceal their identity. If they had taken full precaution to conceal their identity by tying Dhatas on their faces they would certainly have tied them in such a way that they would not fall down easily. It is therefore, all false on the part of the witnesses to say that during the course of scuffle with the villagers the Dhatas of all the known persons had fallen down."

Reverting to the facts of the present case, the theme set up is that there was scuffle between the bandits on one hand and Suresh and Ramesh Chandra on the other hand and in the scuffle, the Dhatas of the bandits came loose and out of which four persons were known persons and the remaining were unknown. In the circumstances, the submission is loaded with substance that a cook and bull story has been set up by the prosecution.

Another feature which further weakens the prosecution case is that no independent witness has been examined by the prosecution to support the prosecution case and the prosecution has withheld other injured witnesses who had actively participated in the exchange of fire between the village people and bandits and had sustained injuries. There is no convincing explanation why independent witnesses named in the FIR were not examined. It amounts to depriving the accused persons of an opportunity of effective cross examination. Regard being had to the fact that the accused Nizamuddin and Fakhruddin had no

criminal antecedents and that no recovery is shown to have been made from them, the prosecution case as against this appellants falls to the ground. As a result of foregoing discussion, the appeals succeed and are allowed. I am of the view that the case against the appellants is not sustainable and the judgment and order as aforesaid in so far as appellants are concerned is liable to be set aside and it is accordingly set aside. The appellant Nizamuddin is already on bail. He needs not surrender. His bail bonds shall stand discharged. Since whereabouts of Fakhruddin are not known, his appeal is allowed in absentia and he is acquitted of the charges. The bail bonds shall stand discharged. The office is directed to remit the record to the court below alongwith a copy of this order for compliance.

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