

Hasrat and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Apr-13-1992

Reported in : 1992CriLJ3107

Judge : G.D. Dube and ;S.K. Verma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : C.A. No. 2730 of 1979

Appellant : Hasrat and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Keshav Sahai, Adv.

Disposition : Appeal allowed

Judgement :

1. This appeal arises from a judgment and order of 6th Additional District and Sessions Judge convicting and sentencing each of the appellants, namely, Hasrat, Jareef and Manglu to an imprisonment for life under 302, I.P.C. read with Section 34 of the Indian Penal Code.

2. The prosecution story as unfolded in the first information report lodged by Mansoor Hussain (P.W. 3) at 10.25 p.m. on 29-12, 1978 in Police Station Kithore district Meerut was in respect of an occurrence which took place in village Jadaunda within the aforesaid Police Station Circle. It was alleged that the tube-well motor of the father of the maker of the report was stolen about 12-13 months before the occurrence. Anwar Hussain, father of the maker of the report had lodged a report against the appellants. The appellants had not been arrested in connection with this theft by that time. Anwar Hussain was making efforts to get them arrested. The appellants got an information about these facts. It is alleged that at about 7-30 a.m. on 29-12-1978, Jareef, and Hasrat stopped Anjyar Hussain near the house of Hasrat and abused him. They told him that as he was making efforts to get them sent to Jail and if he does not stop these activities it will be very bad for him. An exchange of abuse took place between both the parties. They ran towards the deceased for making an assault. At that time this deceased Anwar Hussain had told them that as long as he does not get them sent to jail, he will not keep quiet. Thereupon Hasrat and Jareef had threatened Anwar Hussain that they will kill him before going to jail. It was alleged that at about 7.30 p.m. on 29-12-1978 the deceased was going to his crusher situate at a distance of one furlong North West from the village for offering Namaz. The maker of the report was also going behind him. On the way the appellants came out of the bush. Manglu and Hasrat had lathis and Jareef had one edged 'Ballam'. They challenged the deceased as to how he will escape. Anwar Hussain had a torch. He flashed his torch. The maker of the report recognised the assailants. The appellants caused injuries to the deceased with their weapons. On the alarm of the deceased and Mansoor Hussain, Mijdak Hussain, and Sajid Hussain had also arrived on the spot. It was alleged that the iron portion of the 'ballam' broke from the lathi portion and fell on the ground.

3. After the occurrence Mansoor Hussain prepared a report at his residence in village and went to the Police Station and lodged the first information report. The investigation was taken up by Ganga Ram Nagar (P.W. 8). He interrogated the witnesses at the Police Station. He conducted the inquest proceedings on the next morning. The investigation was thereafter taken up by Khem Singh (P.W. 7) Station Officer of the Police Station concerned. He after completing the

investigation submitted a charge-sheet.

4. The dead body of Anwar Hussain had been sent to mortuary. The doctor conducting the post-mortem report had found three lacerated wounds on the head, one abrasion on back of right shoulder and one incised wound 1 cm x .5 cm x muscle outer part left chest lower part in auxiliary line. The doctor found that all the skull bones except occipital bone had fracture. The brain and membranes were lacerated. The doctor had opined that death was caused due to coma as a result of injury to brain.

5. The prosecution had examined eight witnesses to substantiate the allegations against the appellants. P.W. 1 Dr. K.D. Sharma had conducted the post-mortem at 8.30 p.m. on 30th December, 1978. P.W. 2 Kashi Ram is the Head Moharrir who had registered the case. P.W. 3 is the constable who had taken the dead body to the mortuary. P.W. 4 Mansoor Hussain and P.W. 5 Mizdaq Hussain are eye-witnesses. P.W. 6 Faizul Hasan is the witness for the talks between the appellants and Sajid Hussain about two hours before the occurrence. The role of P.W. 7 and P.W. 8 have already been indicated above.

6. The appellants had not pleaded guilty to the charges. They had not produced any witness in defence. Eye-witness Mizdaq Hussain, P.W. 5 has not supported the prosecution story. He was declared hostile and was cross-examined by the prosecutor. The learned Sessions Judge, believing the prosecution version, passed the impugned order.

7. It has been argued by the learned counsel for the appellants that there is a solitary statement of Mansoor Hussain. He was a young man of 19 years of age reading in B. Com. Part I. Our attention was drawn to the first information report (Ext. Ka-1). It was stated that this report is written in very good words and there is not even a single cutting. It was argued that this sort of writing is not at all expected from a man whose father was killed a few minutes earlier before his eyes. Some other defects in the prosecution story and investigation were pointed out for the purposes of showing that the statement of Mansoor Hussain cannot be relied as a statement of a wholly reliable witness. It was argued that the circumstances indicate that he was not present at the spot. The report was lodged

after some consideration and the appellants were falsely implicated in this case.

8. The Chik report (Ext. Ka-2) shows the first name as Manglu, second as Hasrat and the third as Zarif. All the three have been shown as the sons of unknown persons. The first information report indicates the names of father of all the three persons. In the very first line the reporter had mentioned the name of the father of Hasrat as Shafiq, name of the father of Zarif as Peer Bux and the name of the father of Manglu as Karim Bux. Throughout his report, the reporter is mentioning the names of these three persons. When Kashi Ram (P.W. 2) was questioned about his statement he gave a very ridiculous explanation that the names of the father of the assailants was mentioned only with reference to the previous incident of theft which took place about a year back and it was not mentioned for the present incident. This explanation is not at all acceptable to us. Throughout the report, the witness is referring to these three persons. It was not at all necessary for him that wherever the names of the three persons occurred, the parentage should have been mentioned. This very lacuna in the Chik report casts a shadow of doubt on the prosecution story. Learned counsel for the applicant was fully justified in his argument that this Ext. Ka-2 itself reveals that probably the names of Manglu, Hasrat and Zarif were mentioned in the printed pro forma of the chick-report and other columns about this incident were left blank to be recorded at a later stage. Some other recorded was probably planned from the side of Mansoor Hussain in which the names of Manglu, Hasrat and Zarif were to figure as the assailants. Thereafter the whole story was changed giving the colour of a long standing enmity between the two parties of the deceased and the assailants.

9. Mansoor Hussain has admitted in his cross-examination that on the date of his statement, i.e. 6th July, 1979, he was not aware of the name of the father of Manglu. This statement of Mansoor Hussain (P.W. 4) makes it obvious that some other man had played his role in lodging of the report.

10. Learned counsel for the appellant have drawn our attention to a column in the inquest report which reads as under :

^ml O;fDr dk uke ftlus igys Fkkus esa 'kofeyus dh lwpuk nh gks**

Against this column the name of Mansoor Hussain should have been mentioned. When the attention of the Investigating Officer was drawn to this statement he gave the routine answer that on account of omission he did not write the name of the reporter Mansoor Hussain. This explanation is not satisfactory. There was no occasion for not mentioning the name of Mansoor Hussain when the Investigating Officer had made entries against all the columns. The only explanation which could be offered at this stage is that by the time of preparation of inquest report the first information report had not been transcribed and a story had only been carved out after consultations and deliberations.

11. One important factor emerges from the facts on record. P.W. 4 has admitted in his cross-examination, that Sajid Hussain, Pradhan of the village, had been arrested in connection with this crime. He was murdered after his release on bail. The Investigating Officer had also admitted that before the start of the inquest proceedings he had interrogated Faizul Hasan (P.W. 6). P.W. 6 had stated before the trial Court that it was 5 p.m. when Sajid Hussain was asking the appellants to kill the deceased otherwise he will get them sent to Jail. Thus, it is apparent that by the time the inquest proceedings had started Faizul Hasan had informed the Investigating Officer that Sajid Hussain was acting as a, conspirator. Despite these things this Faizul Hasan (P.W. 6) and Sajid Hussain, Pradhan of the village had been made the witnesses of inquest. The P.W. 4 also says that Sajid; Hussain had been arrested in connection with; the crime. If some evidence was pointing out that Sajid Hussain was a conspirator in the crime and thus an accused then there was no justification to make him the witness of an inquest proceedings. The explanation of the Investigating Officer (P.W. 8) is that as Sajid Hussain was a respectable member of the locality, he had been made a witness of the inquest proceedings. This is not at all sound. If a person was figuring as an accused at any time then he could not have been made a witness of inquest proceedings. It appears from these facts also that till the preparation of inquest proceedings, the prosecution was not sure as to how the case will proceed and that is why the Pradhan of the village was made a witness of inquest. Thereafter it appears that the prosecution version was carved out and strangely enough Sajid Hussain was shown as a witness of the occurrence also.

12. The first information report in an offence like murder plays an important role. The trustworthiness of a sole eye-witness like in this case has to be judged from the statement he makes in the first information report. From the discussions made above, we have come to the conclusion that the first information report was not written by this Mansoor Hussain at the alleged time, i.e., just after the occurrence at his residence. The learned Sessions Judge has given a strange explanation in his judgment that P.W. 4 Mansoor Hussain might have forgotten the name of the father of Manglu at the time of his statement and that is why he could say so. This is a total misreading of the evidence. Mansoor Hussain has stated in an unequivocal term that he did not know the name of the father of Manglu. Hence there was no scope of any forgetfulness. If it was so he could have easily stated that he was not remembering the name of the father of Manglu.

13. The occurrence had taken place on the way to the crusher in a dark night. The only source of light was torch. It has also come in evidence that according to the prosecution a threat had been given to Anwar Hussain that he will not be left alive to get the appellants sent to jail. In such circumstances, Anwar Hussain would not have gone alone and that too with a young person of 19 years. There is not even a single weapon in their hand. This conduct of the deceased as well as the witness Mansoor Hussain was improbable under the tense atmosphere of that day. We have every doubt about the very presence of Mansoor Hussain on the spot.

14. It is true that a person may be convicted even on the statement of a solitary witness but such a solitary witness should be wholly reliable. Since Mansoor Hussain is not a wholly reliable witness, the conviction and sentence by the trial Court against the appellants cannot be sustained.

15. The appeal is allowed. The judgment of the lower Court is set aside. The appellants are acquitted of the charges levelled against them. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.