

Tilak Ram and ors. Vs. State of U.P.

Tilak Ram and ors. Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/466640

Court : Allahabad

Decided On : Feb-04-2005

Reported in : 2005CriLJ2752

Judge : Imtiyaz Murtaza and ;M. Chaudhary, JJ.

Acts : Indian Penal Code (IPC) - Sections 148, 149, 302 and 323

Appeal No. : Criminal Appeal No. 104 of 1978

Appellant : Tilak Ram and ors.

Respondent : State of U.P.

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : R.K. Sharma, ;K.S. Mishra, ;Mohan Chandra, ;S.N. Mulla, ;I.N. Mulla, ;G.S. Chaturvedi and ;D.P. Mital, Advs.

Disposition : Appeal dismissed

Judgement :

Imtiyaz Murtaza, J.

1. The present appeal has been filed against the judgment and order dated 23.12.1977 passed by 1st Additional Sessions Judge, Meerut whereby the appellants have been convicted under Section 148 I.P.C. and sentenced to

undergo rigorous imprisonment for two years and under Section 302 read with 149 I.P.C. sentenced to undergo imprisonment for life and under Sections 323/149 I.P.C. sentenced to undergo rigorous imprisonment for three months. All the sentences to run concurrently.

2. The brief facts of the case as mentioned in the first information; report are that on 21.1.1977, Suresh Chand, informant alongwith his brother Janmejaya, cousin Jagbandhan and brother-in-law Ajab Singh were working in their field. Tilak Ram, Satyaveer, Vakil & Lekhpal were also ploughing their field. At about 10 A.M. they started cutting soil from the Daul of their field. On this Jagbandhan objected and the accused persons started abusing. Randhir Singh also reached there and intervened. The accused left the field after extending threats and returned alongwith accused Dalbir, Dan Sahai and Harveer. Accused Tilak Ram, Dalbir and Harveer were armed with Ballam, Vakil and Lekhpal armed with Balkati and Satyaveer and Dan Sahai were armed with bhala reached there. Jagbandhan was smoking Hukka and he was assaulted by the accused and he died on the spot. The witnesses Ajab Singh, Sachitanand and Janmejaya attracted by the cries and ran towards the scene of occurrence. Accused Satyaveer, Vakil and Lekhpal ran towards them and so they fled and took shelter in the field of Bakhtey. Mitthan who was working in his field wait also attracted by the noise and he was intercepted by them. Satyaveer assaulted him with Bhala. Meanwhile Tilak Ram reached there and asked the assailants to leave him and proceeded to the village to do away with Randhir. Randhir was sitting on his cot in his Gher and his wife Smt. Kishan Dei was cleaning the bufallow. On the arrival of the accused he tried to run away to save his life but was surrounded and mercilessly assaulted by the assailants and he also died on the spot

3. On being informed by Mitthan that the accused had gone to the village to do away with Randhir, Suresh Chand, Janmejaya and Ajab Singh rushed to the Gher of Randhir where they were told about the occurrence. Suresh Chand lodged the F.I.R. at the police station at 1.15 p.m.

4. S.O. Bhajan Lal Sharma started, the investigation of the case and he reached at the place of occurrence. He found the dead body of Jagbandhan in the field.

Under his instructions Sub-inspector S.P. Singh prepared inquest report (Ext.Ka.6), Naksha lash (Et.Ka.7) and Challan lash (Ext.Ka.8). He prepared the site plan (Ext.Ka.5) on the pointing out of Janmejy & Mitthan. He took in his possession blood stained and plain earth and blood stained clothes of the deceased and prepared its recovery memo (Ext.Ka.19 & Ext.Ka.20). Thereafter he went to village Idrisipur and found the dead body of Randhir in his Gher. On his instructions Sub-inspector S.P. Singh prepared inquest report (Ext.Ka.11), Naksha lash (Ext.Ka.12) and Challan lash (Ext.Ka.13). He took in his possession blood stained and plain earth (Ext.Ka.15) He prepared site plan (Ext.Ka.14). The dead bodies were sent for the post mortem examination through constables Ikram Singh and Dharam Singh.

5. The autopsy on the dead bodies was conducted by Dr. Ashok Kumar Sharma, Medical Officer, Primary Health Centre, Baghpat on 28.1.1977 between 11 a.m. and 12.40 p.m. He noted the following ante mortem injuries on the dead body of Jagbandhan:-

1. Incised wound 13 cm x 1-1/2 cm x brain deep on the right side of scalp, 10 cm from right ear and 1/2 cm. From root of the nose. Dark clotted blood was present and brain matter had come out from the wound.
2. Five punctured wound on right cheek of average size 1 cm x 1.5 cm x thickening of cheek, fracture of right mandible in the area of 9 cm x 3 cm.
3. Incised wound with margins clean cut on right side back of scalp, 3 cm x 1 cm x bone deep, oblique ill
4. Incised wound with clean cut margins on right side neck back, 4 cm x 1.5 cm x muscle deep, 3 cm below injury No. 3.
5. incised wound with clean cut margins on right shoulder upper and anterior side, 6 cm x 3 cm, extending upto; the outer part of right clavicle bone
6. Incised wound with clean cut margins, 6 cm x 2-1/2 cm x 2 cm on light shoulder just behind injury No. 5

7. Contusion 6 cm x 2 cm on the right arm anterior side 6 cm below injury No. 5.
8. Punctured wound 1-1/2 cm x 1/2 cm x 3 cm on the back of left forearm.
9. Abrasion 3 cm x 54 cm on the back of right hand. 4 cm below right wrist joint.
6. In the opinion of doctor death was caused due to shock and haemorrhage as a result of ante mortem injuries.

7. He also noted following ante mortem injuries on the dead of Randhir:-

1. Incised wound with clean cut margins 14 cm x 3 cm x brain on the right side scalp from back of right ear.

The brain matter had come out.

2. Incised wound with clean cut margins, 7 cm x 2 cm x bone deep on right side scalp extending upto the upper right ear.

3. Semi-circular incised wound with clean cut margins 4 cm x 2 cm x bone deep on left upper part of scalp 9 cm above left ear and 19 cm from left eye brow.

4. Incised wound with clean cut margins 6 cm x 1/2 cm x bone deep 2-1/2 cm above and behind left ear.

5. Deep incised wound with clean cut margins 13 cm x 4 cm x bone deep on right side face from right eye inner side cutting the nose on right side and upper lip on right side. The underlying bone and teeth were visible.

6. Incised wound with clean cut margins 2 cm x 1/2 cm x bone deep on right side cheek just below the right eye.

7. Incised wound with clean cut margins 3 cm x 1 cm x bone deep on right side inner part of eye brow.

8. Clean cut incised wound on the right side on chin 5 cm x 1 cm x bone deep with fracture of mandible right side.

9. Abrasion on left side chest 1-1/2 cm x 1 cm x 5 cm above and inner to left nipple.
10. Punctured wound on right anterior side of chest 1/2 cm x 1 cm 11-1/2 cm below the right nipple.
11. Contusion 8 cm x 1/2 cm on the right arm upper part 9 cm below right shoulder joint.
12. Lacerated wound 2 cm x 1 cm x 1/2 cm on the right arm lower part anterior side just above the right elbow joint.
13. Abrasion 1/2 cm x 1/2 cm on the back right arm 8 cm above the right elbow joint.
14. Lacerated wound 3 cm x 54 cm x skin deep on inner part of right index finger near base.
15. Clean cut incised wound 3 cm x 1/2 cm x skin deep on back of left forearm 7 cm above left wrist joint
16. Two incised wound of average size x 1/2 cm x skin deep on the left palm inner side near left wrist Joint
17. Lacerated wound 1/2 cm x 1/2 cm x skin deep on the inner side of left hand ring finder.
18. Incised wound 2 cm x 1/2 cm x skin deep on the outer side of right leg 10 cm above right ankle joint
19. Punctured wound 1/2 cm x 54 cm x 1 cm on the back side of right leg above ankle joint
8. In the opinion of doctor cause of death was due to shock and haemorrhage as a result of ante mortem injuries.
9. On 28.177 the investigating officer interrogated Mitthan, Sachitanand and others and Mitthan was sent to Primary Health Centre for medical examination. Dr. R.K.

Sharma Medical Officer found the following injury on his person.

Incised wound 1/2' x 1/2' x skin deep on the palmar aspect of left wrist joint transverse. Margins clean cut regular.

10. After conclusion of the investigation charge sheet was submitted in Court and the case was committed to the Court of Sessions. In order to prove its case prosecution examined P.W.1 Suresh Chand informant of the case. P.W.2 Rajveer Singh had prepared the chik F.I.R. P.W.3 Karam Singh had escorted the dead body for the post mortem. P.W.4 Smt. Kishan Dai is an eye witness. P.W.5 Mitthan is an eye witness. P.W.6 Ajab Singh is an eye witness P.W.7 Dhoom Singh is also an eye witness. P.W.8 Bhajan Lal Sharma is investigating officer of the case, P.W.9 Dr. R.K. Sharma had medically examined injured Mitthan.

11. The case of the defence is of denial and two defence witnesses namely Omkar Singh and Kuldeep Singh were examined by Harveer. D.W.1 stated that on the day of occurrence he had gone to Budhana in the morning at 7.00 a.m. to encash the parchi issued by Sugar Mill for the supply of sugarcane. He stated that parchi was not encashed on that day and toe returned to the village at about 5.30 p.m. D.W.1 Omkar Singh stated that on 27.1.77 at about 7 a.m. he had met at Kanand Bus Stand and had gone to Budhana with him to encash the parchi issued by the Sugar Mill in respect of the sugarcane supplied by his father. He also stated that he had received the payment of the parchi and had put his thumb impression mark in the parchi and the register maintained by the Mill.

12. D.W.2 Kuldeep Chand is Cane Accountant Khatauli Sugar Mill. He stated that in the Mill's registered the payment of Pitam Singh is recorded.

13. The Sessions Judge considering the evidence on record has convicted the appellants as aforesaid.

14. Learned counsel for the appellants has submitted that no independent witness is supporting the prosecution case. All the witnesses are partisan and the ocular testimony is in conflict with the medical evidence and the investigation is tainted.

15. In order to appreciate the submissions of the learned counsel for the appellant we have to carefully examine the testimonies of the witnesses.

16. The evidence of P.W.1 Suresh Chandra shows that on the date of occurrence he along with Jagbandhan, Jagbir, Ajab Singh had gone to the field of Jagbandhan at about 8.00 A.M. to plough the field. Tilak Ram, Satbir, Vakil and Lekhpal started demolishing the common daul resulting in altercation; with Jagbandhan. The accused left the field after extending threats. They returned with Dalbir, Dan Sahai and Harbir. They were armed with Bhalas, Ballams and Balkaties. They assaulted Jagbandhan who died on the spot.

17. P.W.6 Ajab Singh is brother in-law of the deceased Jagbandhan. He had gone along with P.W.1 Suresh Chandra at about 8.00 A.M. to plough the field of Jagbandhan. He further stated that accused Tilak Ram, Satbir, Vakil and Lekhpal were also ploughing their field and about 10.00 A.M. demolished a portion of daul of Jagbandhan's field. He raised objection;. The accused abused him and they left the field after extending threats and returned along with Dalbir, Dan Sahai and Harbir. Tilak Ram, Dalbir and Harbir armed with Ballams, Vakil and Lekhpal were armed with and Satbir and Dan Sahai were armed with Bhalas. Jagbandhan was assaulted by the accused and he died on the spot. Ajab Singh, Janmejaj attracted by the noise and ran towards the scene of occurrence. Satbir, Vakil and Lekhpal ran towards them and they fled away and took shelter in the field of Bakhtey. Mithan who was working in his field, was also attracted by the noise and he was intercepted by the three accused and Satbir assaulted him with Bhala. It is further stated that Tilak Ram reached there and asked the assailants to leave him and proceed to do away with Randhir deceased. On being informed by Mithan the accused had gone to the village to do away with Randhir. Suresh Chandra, Janmejaj and Ajab Singh reached at the Gher of Randhir and they were told about the murder of Randhir by the accused persons. Thereafter Suresh Chandra went to Doghat scribe the report (Ext. Ka-1) and handed over the same at 1.15 P.M. at the police station.

18. The evidence of P.W.5 Mithan shows that on the date of occurrence he had gone to his field to pluck Sarson and he was attracted by the assault made by the

accused on Jagbandhan. He was prevented from reaching the scene of occurrence by accused Satbir, Vakil and Lekhpal Satbir had assaulted him. He had received one incised wound which lead assurance to his presence on the spot

19. P.W.7 Dhoom Singh stated that he was sitting oh the roof of his house when he saw the accused reaching at the gher of Randhir who made an attempt to run away but was surrounded and mercilessly assaulted. He succumbed to his injuries on the spot.

20. P.W.4 Smt. Khan Dei stated that she had gone to the Gher to clean the buffalow, the accused came to the Gher and assaulted her husband. Harchand and Dhoom Singh had raised alarm.

21. In the present case the occurrence took place at two different places. The first place of occurrence is a field where Jagbandhan was murdered and the second place of occurrence is Gher of Randhir where he was murdered. P.W.1 Suresh Chand P.W.6 Ajab Singh, P.W.5 Mitthan are the eye witnesses of the murder of Jagbandhan. They had fully supported the prosecution case. They have also explained their presence at the time of occunrence. P.W.5 Maitthan had also received injury in the same occurrence, which finds corrohoration from the testimony of P.W.9 Dr. R.K. Shama.

22. P.W.4 Smt. Kishan Dei and P.W.7 Dhoom Singh are eye witnesses of murder of Randhir. P.W.4 Smt. Kishan Dei is wife of deceased Randhir. Her presence at the time of occurrence is natural. P.W. & Dhoom Singh lives very close to the Gher of the deceased. His presence at his house is natural. He is also an independent witness and no animus for the false implication of the accused has neither been suggested nor established.

23. The testimonies of the eye witnesses are credit! worthy. The witnesses were subjected to extensive cross-examination but nothing substantial could be attracted there from which could render either his presence at the place of incident or credibility suspected. P.W.5 Mithan is an injured witness whose presence cannot be doubted at the place of occurrence. The testimonies of the eye witnesses find full corroboration from the post mortem examination report.

According to the prosecution case accused were armed with Ballam, Bhala and Balkan. Jaghandhan had received about 14 injuries, which were incised wounds, punctured wounds, contusions and abrasionss Similarly Randhir had received about 20 injuries, which were incised wounds, punctured wounds, lacerated wounds, contusions and abrasions. Thus, the testimonies of the eye witnesses are fully corroborated by the medical evidence. The F.I.R. has been promptly lodged. According to the prosecution case the occurrence took place after 11.00 A.M. and report was lodged at 1.15 P.M. The place of occurrence at two places and the complete occurrence must have taken some time. The distance of police station from the place of occurrence is two miles. Thus, the report has been promptly lodged. The essential factors of the prosecution case including time, place of incident, names of the appellants, weapons in the hands of the! appellants. names of the victims, manner of assault, name of the informant and witnesses and origin of the incidents have all been mentioned. It is significant to mention that criminal courts attached great importance to the prompt lodging of the F.I.R- because the same substantially eliminate the possibility of embellishments and concoction creeping in the prosecution story.

24. Counsel for the appellants has challenged the findings of the Sessions Judge on the ground that no independent witness is supporting the prosecution case. The testimonies of the witnesses cannot be rejected simply because they are partisan witnesses. The evidence in each case has to be considered from the point pi view of trustworthiness and from the angle as to whether it inspires confidence in the mind of the court to accept and that the question of credibility and reliability of a witness has to be decided with reference to the way he faired in the cross-examination and the nature of impression created in the mind of the court. We have carefully scrutinized the evidence of the witnesses. The presence of all the witnesses at the time of occurrence is natural arid the evidence tendered by them inspires full confidence. Counsel for the appellants could not point out such infirmity either to discredit or reject their evidence. Eye witness account is fully corroborated the prompt F.I.R. and the medical evidence on the record.

25. Counsel for the appellants has challenged the testimonies of the eye witnesses on the ground that it is not in conformity with the medical evidence. He

submits that the post mortem examination report of the deceased shows semi digested Food in the abdomen of Jagbandhan and Randhir whereas the oral evidence is to the effect that they had taken food shortly before the occurrence. P.W.6 Ajab Singh slated that he and Jagbandhan had taken food at about 9.00 A.M. P.W.1 Suresh Chandra stated that they had gone to the field at about 8.00 A.M. Similarly P.W.4 Smt. Kishan Dei had stated that her husband Randhir had left the house at about 12.30 P.M. after taking meals. She is a rustic illiterate woman and had no correct idea about the time. The evidence of the witnesses is clear that Randhir had visited the field at about 10.00 A.M. The testimony of P.W.7 Dhoom Singh shows that the accused had come to the Gher of Randhir at about 12.00 and 1.00 P.M. It appears that Randhir had taken meal before 10.00 A.M. and thereafter left the house. He was done to death at about 11.30 A.M. and by that time the food could have been digested to a great extent as digestive process also depends upon the nature of food. Therefore there is no discrepancy with regard to time of occurrence in the oral and medical evidence.

26. The counsel for the appellants submits that Harbir was not present at the time of occurrence. He had left the village at 7 A.M. for Buddhana. He alongwith D.W.1 Omkar Singh had gone to encash the sugarcane parchi. Omkar Singh had encashed his parchi but he could not encash his parchi if he had gone to encash his parchi alongwith Omkar Singh then his parchi should have also been encashed. There is no force in the submission of the counsel for the appellants that Harbir was not present in the village on the date of occurrence The ; Sessions Judge also rightly rejected his plea of alibi.

27. In view of above discussions the appeal is devoid of merit and is hereby dismissed. The appellants are on bail. They are directed to surrender to serve out their sentences. Their frail bonds are cancelled and sureties are discharged. The C.J.M. Meerut is directed to take them into custody forthwith on receipt of a copy of this judgment and send them to jail as also send its compliance report within a month.