

Baldeo and anr. Vs. State of U.P.

Baldeo and anr. Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/471795

Court : Allahabad

Decided On : Jan-16-2004

Reported in : 2004CriLJ2686

Judge : M.C. Jain and ;Onkareshwar Bhatt, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304; Code of Criminal Procedure (CrPC) , 1974 - Sections 174

Appeal No. : Crl. Appeal No. 1489 of 1981

Appellant : Baldeo and anr.

Respondent : State of U.P.

Advocate for Def. : K.P. Shukla, Adv. and ;F.P. Shukla, A.G.A.

Advocate for Pet/Ap. : Rakesh Dwivedi, ;Krishna Kapoor, ;A.K. Shukla and ;K.M. Lal, Adv.

Judgement :

Onkareshwar Bhatt, J.

1. Appellants Baldeo and Mangal Singh have preferred this appeal against their conviction under Section 302/34, I.P.C. The judgment of conviction was passed by the then Sessions Judge, Hamirpur on 6-6-1981 in Sessions Trial No. 285 of 1980

and the accused appellants have been sentenced to life Imprisonment.

2. During pendency of the appeal, appellant Baldeo died. The appeal was ordered to be abated against him on 18-11-2003.

3. Appellant Baldeo, since dead, was the father of surviving appellant Mangal Singh. The deceased of this case is Nathua. The deceased was brought up by his maternal uncle PW 2 Baij Nath. The deceased was married to Smt. Putti PW 1. The deceased along with his wife Smt. Putti lived in village Kul Pahar district Hamirpur. When Nathua became adult he demanded back his 40-45 Bighas land from appellant Baldeo who was his uncle. Baldeo refused to give back the land, whereupon Nathua instituted a case in which he won. Thereafter, Nathua again demanded the land, whereupon Baldeo asked him to wait for one year since he had to marry his daughter. Baldeo further told that after the marriage of his daughter he would leave the land. The fact that Nathua lived with his maternal uncle Baij Nath, was brought up by him and was married to Smt. Putti has been admitted by the defence. The fact of litigation regarding the land has also been admitted. However, Baldeo, stated that he had preferred an appeal in which stay was granted.

4. On 16-6-1980 Nathua at about 9 a.m. went to Haar for ploughing his field: He had hired Ram Charan, Brij Bihari PW 7 and Persu PW 8 for the said purpose. Persu had bullocks with him and Nathua had asked his wife Smt. Putti to bring breakfast for him at the Haar. Smt. Putti started with the break fast along with Baij Nath PW 2. When they reached near Khalian of Baldeo they saw that Baldeo and Mangal Singh were abusing Nathua. Baldeo was stopping Nathua from ploughing the field. Thereupon Nathua took the bullocks of Persu and said that he, himself would plough the field and also started ploughing. Thereupon Mangal Singh appellant with Kholia and Baldeo having axe with him reached near Nathua and started assaulting him. The deceased left the plough and ran. Mangal Singh chased Nathua and struck Kholia on his head. Nathua fell down whereafter Baldeo assaulted him by axe on his neck. On the alarm raised by Smt. Putti and Baij Nath the two accused ran away. Smt. Putti found that her husband Nathua had died and blood had fallen at that place. Baij Nath was left near the dead body.

Smt. Putti went to police station Kulkar and lodged oral report at 9.45 a.m. on 16-6-1980. P.W. 9 Shyam Pal Singh was present at the police station. He took up the investigation and went to the place of occurrence. He prepared inquest of the dead body of deceased Nathua and recovered blood stained earth and also arrested the two accused. The accused were interrogated and on the pointing out of Baldeo axe was recovered from the Khalihan on 16-6-1980 at 6.45 p.m. On the pointing out of accused Mangal Singh Khaulia was recovered from the room built in Khalihan. The recovery was made in the presence of Prabhu P.W. 5 and Din Dayal, He sent the dead body of the deceased for postmortem examination. P.W. 3 Dr. Ghan Shyam Pandey conducted postmortem examination on 17-6-1980 at 1.30 p.m. The doctor found following ante mortem injuries on the person of the deceased :

1. Incised wound 13 cm x 6 cm x bone deep in posterior side of neck 3 cm x 7 cm below and behind right and left ear respectively. Carotid vessels stnomastoid muscle cut with communitied fracture and laceration of 4th, 5th, 6th cervical vertebrae and spinal cord underneath. There is profuse haemorrhage. The wound is V shaped whose lines converge at the cervical vertebral line, the angle between the lines being 135 approx.
2. Lacerated wound 5 cm x 1 cm x muscle deep in Right front parietal line.
3. Lacerated wound 4 cm x 1 cm x muscle deep in left parietal prominence.
4. Abrasion 5 cm x 3 cm in right elbow joint upper part.
5. Incised wound 2 cm x 1 cm (Parietal amputation) of left little finger at proximal phalynx at dorsal aspect.
5. On internal examination the doctor found that small intestine contained gases and digest food material and large intestine contained faecal matter. In the opinion of the doctor death was caused due to shock and haemorrhage as a result of injury No. 1.
6. The trial Court found that murder of the deceased was committed at the date, time and place alleged by the prosecution. There was motive to commit the said

murder. The testimony of Smt. Putti as well as Baij Nath is reliable and recovery of axe and Khaulia on the pointing out of accused is proved. Accordingly, the accused were held guilty and sentenced as mentioned above.

7. We have heard Sri Krishna Kapoor, learned counsel for the appellant and Sri K.P. Shukla, learned A.G.A. for the State and scrutinized the evidence on record carefully.

8. As mentioned earlier, appellant Baldeo, since dead, was the uncle of the deceased Nathua. The surviving appellant Mangal Singh is the son of Baldeo. When the deceased became adult he demanded back his 45 Bighas land from Baldeo. On refusal of Baldeo to give the land the deceased instituted a case which he won. This fact has been admitted by Baldeo in his statement under Section 313 Cr. P.C. Since the deceased demanded the land Baldeo asked him to wait for one year since he has to marry his daughter. On the date of occurrence, i.e. 16-6-1980 at about 9a.m. the deceased hired some labourers and bullocks for ploughing the field. The labourers were Brij Behari P.W. 7 and Persu P.W. 8. Both of them turned hostile. However, Persu admits that the deceased had come to him and engaged him, Ram Charan and Brij Behari for ploughing the field. He has further stated that he had gone for ploughing the field at about 9 a.m. He has also stated that Baldeo met him and he asked the witness that deceased Nathua had no land and the witnesses should go back. He has stated that deceased took his bullocks and proceeded to plough the field himself. Thereafter he returned to his house. According to the prosecution case also the deceased took the bullocks of Persu P.W. 8 and went ahead for ploughing the field himself. The prosecution case, therefore, finds corroboration from the statement of Persu P.W. 8 regarding presence of bullock by which the deceased intended to plough the field. The time is also corroborated to be 9 a.m. when the deceased proceeded for his field he had asked his wife Smt. Putti to bring break-fast for him. She along with Baij Nath, her maternal father-in-law, proceeded towards the field. Smt. Putti and Baij Nath are the two eye-witnesses of the occurrence. Undoubtedly, they were related to the deceased. However, this fact alone will not be a factor to affect their credibility if their evidence is found trustworthy and reliable, Both of them have stated that when the deceased proceeded to plough the field himself the appellant Mangal

Singh with Khaulia assaulted the deceased on his head. The deceased ran and Mangal Singh and Baldeo pursued him. Appellant Marital Singh again assaulted the deceased on his head due to which he fell down. Thereafter Baldeo gave axe blow on the neck of the deceased. The deceased died on the spot. Blood stained earth was also recovered from the place of occurrence. The blood stained earth had human blood as was reported by the Chemical Examiner and Serologist. The deceased had injuries on his neck, as has been stated by Dr. Ghan Shyam Pandey P.W. 3. He stated that the injury No. 5 was also caused by axe. The injuries No. 2 and 3, according to the doctor, could be caused by Khaulia. The testimony of the two eye-witnesses regarding the date, time and place of the occurrence and regarding the manner of assault finds complete corroboration from the medical evidence as well as by the recovery of blood stained earth from the place of occurrence. The use of axe and Khaulia is also corroborated from the circumstance of their recovery at the pointing out of Baldeo and Mangal Singh appellant. The recovery of axe and Khaulia from Khalihan and room of the appellant has been stated by Sub-Inspector Shyam Pal Singh, the Investigating Officer to have been made on the date of the occurrence itself. Prabhu P.W. 5 has also stated about the above two recoveries. It has been contended that the witness Prabhu is inimical to the accused. Prabhu has stated that after the incident Baldeo had instituted a false case against him. Since this case was instituted after the occurrence it cannot be said that there was enmity of Baldeo with the witness prior to the occurrence. Prabhu stated that uncle of Baldeo had lodged the report against him prior to the occurrence. However, no further cross examination was made from the witness as to when this report was lodged and what the report was about. No report has been filed by the defence. On the above fact it cannot be said that the witness Prabhu was inimically disposed towards the appellant. His testimony coupled with the statement of the Investigating Officer proves the recovery of axe and Khaulia from Khalihan and room therein of the appellant. The axe and Khaulia also contained blood stains. However, it was found disintegrated by the Chemical Examiner and Serologist.

9. It has been contended that from the place of occurrence no breakfast, which Smt. Putti was carrying, had been found which makes her presence doubtful. Smt. Putti has stated that she had left the breakfast in Khalihan of appellant Mangal

Singh. Therefore, there was no occasion that breakfast could have been found near the place of occurrence. It is also contended that first information report has been ante timed. In this regard, it is contended that in the inquest report title of the case was not mentioned. However, no question was asked from the Investigating Officer in this regard and in the absence of any clarification from the Investigating Officer no capital can be made by the above omission. The inquest report Ex. Ka 2 shows that crime number is mentioned in it. Non-mentioning of the title of the case by itself does not spoil the prosecution case. It is also contended that mention of axe and Khaulia has not been made in it whereas one of the witnesses of inquest is Baij Nath P.W. 2, who is an eyewitness, according to prosecution. Non-mentioning of the weapon of assault, in our opinion, is not a factor, because the purpose of inquest report is to record apparent cause of death describing the injuries as may be found on the body of the deceased. The opinion given in the inquest report does not attain finality because the dead body has to be subjected to postmortem examination which is done by medical expert and is more authentic. If the injuries are also not described in detail in the inquest report, it is not a circumstance against the prosecution because the Investigating Officer is not a medical expert. Moreover, an inquest report is not a substantive evidence. It follows that questions regarding the details, as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, are beyond the scope of the report submitted by the police under Section 174 Cr. P. C. Both the facts urged to back the contention about the anti-timing of the first information report, in our opinion, do not hold good. It is also contended that Smt. Putti did not mention that the occurrence was of 9 a.m. in the first information report. She stated that while dictating the first information report she mentioned that it was breakfast time. The mention of 9 a.m. in the first information report by itself does not discredit the prosecution version. The first information report is not a substantive piece of evidence and mere mention of 9 a.m. instead of breakfast time does not go against the prosecution. Dr. Ghan Shyam Pandey P.W. 3 in the postmortem report, Ex. Ka 3. has mentioned that he had signed six police papers and returned the same to the police constable. Sri Shyam Pal Singh, Investigating Officer, stated that the first information report was written on 16-6-1980 and on 17-6-1980 it reached the office of the Circle Officer. He also stated that special report

was sent on 16-6-1980 by constable Sheo Kumar. All the above facts prove that the first information report was made at the time as alleged by the prosecution. The mere fact that prior to his murder the deceased had not cased himself is not a circumstance which discredits the sworn testimony of the two eye-witnesses regarding the time of occurrence.

10. According to Dr. Ghanshyam Pandey, the injury No. 1 of the deceased was the cause of his death. The injuries No. 2 and 3 were lacerated wounds on the right side of head. It has come in evidence that appellant Mangal Singh and his father were hurling abuses at the deceased. Baldeo was resisting the ploughing of the field by the deceased. It has also come in evidence that the accused persons were scolding the labourers from ploughing the field. The evidence also shows that the deceased himself proceeded to plough the field by taking the bullocks of Persu. Since prior to the occurrence abuses were being exchanged and the deceased was adamant to plough the field, culpable homicide was committed without premeditation in a sudden fight in the heat of passion upon sudden quarrel. The blows of Khaulia were given, on the head of the deceased without any intention to cause death of the deceased but it appears to have been done with the knowledge that it was likely to cause death. In our opinion, the facts and circumstances take out the case from the purview of Section 302 to Section 304 Part II I.P.C.

11. In view of the aforesaid discussion, the appeal is partly allowed and conviction and sentence of appellant Mangal Singh under Sections 302/34 I.P.C. is altered to Section 304 Part II I.P.C. and he is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 25,000/- only (Rupees twenty five thousand only). The fine after being realized will be paid to Smt. Putti, widow of the deceased and in case of her death to her immediate legal heirs as per law. The amount of fine -will be deposited by the appellant within three months from today.

If the amount of fine is not paid within the stipulated period, the appellant will undergo rigorous imprisonment for a further period of three years.

12. The appellant is on bail. The Chief Judicial Magistrate, Hamirpur will lodge him in jail to serve out the sentence awarded to him. He will report compliance after three months.

