

Lallan Vs. State of U.P.

Lallan Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/472559

Court : Allahabad

Decided On : Aug-30-1988

Reported in : 1990CriLJ463

Judge : V.P. Mathur and ;M.M. Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 157 and 161

Appeal No. : Criminal Appeal No. 227 of 1978

Appellant : Lallan

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv. and ;R.B. Sahai, Adv.

Advocate for Pet/Ap. : U.S. Dwivedi and ;P.M. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Madan Mohan Lal, J.

1. This is an appeal against the judgment and order dt. 16-12-1977 passed by Sri Kishun Lal, the then VIIth Additional Sessions Judge, Allahabad by which he has convicted Lallan appellant under Section 302, I.P.C. and has sentenced him to

undergo imprisonment for life thereunder.

2. Taluqa Prasad and Gama were two real brothers. Gama had not married. He had, therefore, adopted his nephew Lakhan, son of Taluqa Prasad. Lakhan was living with Gama and was looking after his property, including agricultural land. Lallan, appellant, who was the other son of Taluqa Prasad, was jealous on account of the same.

3. Gama and Mohd. Usman were friends and were on visiting terms with each other. Lallan, appellant, did not like the said friendship and intimate relations between them. The appellant Lallan was carrying an impression that it was only on account of Mohd. Usman, deceased, that Gama had not given any share in his property to him but had given his entire property to Lakhan.

4. According to the case of the prosecution, on 19-12-1976 at about 12 in the noon when Mohd. Usman was sitting in the courtyard of his house in Village Dubawal. Police Station Sarai Inayat, District Allahabad, the appellant came there and asked Mohd. Usman to give him his Ghoor (compost manure) to which Mohd. Usman did not oblige. The appellant started hurling abuses and then went away after advancing threats to Mohd. Usman.

5. It is further the case of the prosecution that on the same day, i.e. 19-12-76, at about 4 p.m. Lallan, appellant armed with lathi came to the courtyard of the house of Mohd. Usman, deceased, where he was sitting on a cot. The appellant abused Mohd. Usman deceased and then gave him lathi blows. Mohd. Usman, deceased, stood up and tried to run towards east but the appellant went on striking lathi blows on him. Mohd. Usman, deceased fell down. A hue and cry was raised which had attracted witnesses to the place of occurrence. After the incident the appellant ran away. Mohd. Usman succumbed to his injuries after a few minutes. Thereafter, Smt. Rabia Bano, P.W. 2 daughter-in-law of Mohd. Usman deceased, went to the police station, along with the village chaukidar, to lodge a written report of the incident, on the same day at 6.50 p.m.

6. In support of its case the prosecution examined nine witnesses. P.W. 2 Smt. Rabia Bano was the daughter-in-law of Mohd. Usman, She had lodged report of

the incident. She, along with P.W. 5 Kitabun Nisa, daughter of Mohd. Usman, deceased and P.W. 1 Amanat AH, has given the eye-witness account of the incident. P.W. 3 Sheo Kumar Singh, was Head Moharrir at Police Station Sarai Inayat. He deposed that on 19-12-1976 at 6.50 p.m. Smt. Rabia Bano had come to him at the police station to hand him over the written report of the incident. Post-mortem was conducted by Dr. R. C. Gupta, the then Medical Officer, T. B. Sapru Hospital, Allahabad. As the said doctor had gone abroad and was not available, hence P.W. 6 Vipra Nath Pandey. Pharmacist was examined to prove the post-mortem examination report prepared by the said doctor.

7. According to the said report the postmortem examination of the dead body of Mohd. Usman revealed the following ante-mortem injuries:--

1. Lacerated wound $2\frac{1}{2}' \times 1\frac{1}{2}' \times \frac{1}{4}'$ muscle deep on left side of Head. 3' above left ear. Ecchymosis and oblique.
2. Lacerated wound $1' \times 5' \times$ scalp deep on right side of Head. 4' above and 2' front of right ear. Ecchymosis and oblique.
3. Lacerated wound $1' \times 5' \times$ scalp deep on right side of Head. 3' above and 2' to right ear. Blood clots were present.
4. Fracture of right arm at middle. Blood clots were present.
5. Fracture of both bones of left forearm at middle. Blood clots were present.
6. Fracture of both bones of left leg at middle with 3 small lacerated wounds of $\frac{1}{4}' \times \frac{1}{4}'$ bone deep, oblique.
7. Blood clots and 5 small lacerated wounds of $\frac{1}{4}' \times \frac{1}{4}'$ on middle of right leg with traumatic swelling all over leg, muscle deep, oblique and blood clots were present.
8. On internal examination, the doctor found fracture of frontal right parietal left spinal and laceration of left parietal lobe. He also found the stomach and small intestine empty; and in the big intestine gas and faecal matter was found.

9. According to the doctor the cause of death of Mohd. Usman deceased was head injury due to multiple injuries sustained by him on his head.

10. P.W. 4 Hira Lal was one of the 'panches' in whose presence the 'Panchnama' of the dead body of Mohd. Usman was prepared. The Investigating Officer had also taken samples of bloodstained, and unstained earth from the place of occurrence in his presence. Constable Muzaffar Husain, P. W. 8 and Constable Nanku Singh. P.W. 9 were formal witnesses.

11. The investigation of this case was conducted by P.W. 7 Malkhan Singh, Sub-Inspector, in whose presence this case was registered. At the police station he recorded the statement of Smt. Rabia Bano the informant, and also interrogated the village Chaukidhar Ram Dass, who had come with her to the police station. On the same night the Investigating Officer went to the place of occurrence. He found dead body of Mohd. Usman lying at the place of occurrence. He took in possession the bloodstained clothes of the deceased. He also found blood at the place of occurrence. He took samples of bloodstained and unstained earth. He prepared the inquest report and other relevant documents. He handed over the sealed dead body to constables for taking the same for post-mortem examination. The Investigating Officer inspected the place of occurrence and prepared the site plan thereof. On 20-12-1976 the Investigating Officer recorded the statements of P.W. 5 Kitabun Nisa P.W. 1 Amanat Ali and others.

12. The appellant in his statement denied the case of the prosecution. He further stated that he had been falsely implicated due to enmity. The appellant, however, did not produce any witness in defence.

13. Believing the case set up and the evidence produced by the prosecution the learned trial Court has found the appellant guilty and has accordingly convicted and sentenced him as aforesaid. Aggrieved by the same the appellant has filed this appeal.

14. We have heard the learned counsel for the appellant and the State and have perused the record carefully.

15. The learned counsel for the appellant has urged that the murder of Mohd. Usman had not taken place at 4 P.M. on 19-12-1976, as alleged by the prosecution, but had taken place late in the night and with a view to show that the witnesses had sufficient opportunity and light to see and recognise the assailant the prosecution had alleged that this murder had taken place at 4 P.M. In our opinion, this argument is without merit. The first information report in this case was lodged on 19-12-1976 at 6.50 P.M. This is not all. The Investigating Officer had started the investigation immediately. After recording the statement of the informant at the police station the Investigating Officer left for the place of occurrence, where he had prepared the inquest report at 10 P.M. in the night. In our view, when the first information report was lodged on 19-12-1976 at 6.50 P.M. and when the Investigating Officer had reached the place of occurrence and had even prepared the 'panchnama' on the same night at 10 O'clock it cannot be said that the murder of Mohd. Usman took place subsequently in the night. It may not be out of place to state here that the post-mortem examination report of the dead body of Mohd. Usman reveals that his stomach and small intestines were empty. In our view, had the murder of Mohd. Usman occurred late in the night after dinner his stomach etc. would not have been empty. We are thus satisfied that the murder of Mohd. Usman had taken place on 19-12-1976 at 4 P.M. as alleged by the prosecution, and not late in the night, as submitted by the learned counsel for the appellant.

16. The learned counsel for the appellant has taken us through the contents of the first information report and from the same has tried to urge that the said report could not have been written in the village itself as asserted by P.W. 2 Smt. Rabia Bano, informant, but was in fact written and dictated at the police station itself. The learned counsel for the appellant has laid emphasis in the recitation in the first information report that after searching for the chaukidar the informant had come to the police station along with the chaukidar to make report of the incident. The submission of the learned counsel is that when after getting the report written in the village P.W. 2 Smt. Rabia Bano had gone to the house of Sri Ram Dass, village chaukidar and had then come to the police station along with him she would not have earlier written in the report that after searching for the village chaukidar she had come to the police station along with him. In our view, when the

informant in fact came along with the village chaukidar it was just a matter of description as to how it was stated in the first information report that the village chaukidar had been contacted to accompany the informant to the police station. It may be observed that in the General Diary, by which this case was registered, it was stated that Sri Ram Dass, village chaukidar, had come along with the informant to the police station. P.W. 7 Malkhan Singh, Investigating Officer had also stated that after the case had been registered he had at the police station itself interrogated Sri. Ram Dass, village chaukidar. In our view, when the village chaukidar had in fact come along with the informant to the police station, the aforesaid wording in the first information report that after searching the said chaukidar the informant had come to the police station to lodge the report of the incident cannot go so far as to warrant an inference that the report was not written in the village but had been prepared at the police station.

17. The learned counsel for the appellant has urged before us that when the special report in this case was not despatched on the same night it shows that in fact the first information report was not lodged on 19-12-1976 itself. When P.W. 3 Sheo Kumar Singh, Head Moharrir was confronted with the same, he deposed that he had not sent the special report on the same night simply because there was no other constable available except guard sentries, and that he had conveyed this incident to the control room on wireless, when he requisitioned vehicle for transporting dead body. He had, however, despatched the special report at 6.15 A.M. on 20-12-1976. Besides, it may be noted that it is not that as if every delay in sending a delayed special report to the District Magistrate under Section 157, Cr. P.C. would necessarily lead to the inference that the first information had not been lodged at the time stated or has been ante timed or ante dated or that the investigation is not fair and forth fight. If in a case it is found that the first information report is recorded without delay and the investigation started on that first information report, then, however, improper or objectionable the delayed receipt of the report by the Magistrate concerned that cannot by itself justify the conclusion that the investigation was tainted. (See State of U.P. v. Gokaran, AIR 1985 SC 131). In our view when in this case the first information report was recorded within two hours of the incident and the investigation was immediately started then the delay of a few hours, if any, in sending the special report was not

significant.

18. The learned counsel for the appellant has further urged before us that the incident had not been committed at the place alleged by the prosecution. In this respect he has taken us through the evidence of P.W. 1 Amanat Ali, who stated in his evidence that when on the second day he was called by the Investigating Officer he did not find any blood at the place of occurrence. The contention of the learned counsel for the appellant is that had the incident occurred at the place of occurrence then blood would have certainly been found there. We find no merit in this argument advanced by the learned counsel for the appellant because the blood was in fact found at the place of occurrence when the Investigating Officer made local inspection in the night of 19-12-1976. It may be observed that both P.W. 7 Malkhan Singh, Investigating Officer and P.W. 4 Hira Lal have deposed that at the time of the local inspection on that night blood was found at the place of occurrence and that samples of bloodstained and unstained earth were taken from there. A memo with respect to the same was also prepared on 19-12-1976. As regards the version of P.W. 1 Amanat Ali that no blood was found at the place of occurrence it may be noted that he has stated the same with regard to the position prevailing on the next day i.e. on 20-12-1976, when he was called by the Investigating Officer. In our view when blood had already been detected in the night of 19-12-1976 when the Investigating Officer made the local inspection and samples of bloodstained earth had been collected, there was no significance if subsequently on the morning of 20-12-1976 no blood was observed by P.W. 1 Amanat Ali at the place of occurrence. It may not be out of place to state here that the sample of bloodstained earth collected from the place of occurrence was sent for chemical examination to the Chemical Examiner and Serologist who found that there was human blood. We are thus satisfied that the murder was committed at the place of occurrence, as alleged by the prosecution.

19. The learned counsel for appellant has also argued before us that the motive alleged by the prosecution had not been established. It may be observed that this is a case of direct evidence. Where eye-witnesses have been examined to prove the incident and in such a case motive does not play an important role. Any way, we are of the opinion that the prosecution has tried to make out the motive. P.W. 2

Smt. Rabia Bano, informant, has stated in her evidence that Mohd. Usman deceased and Gama were very friendly to each and because Gama, who was unmarried, had taken his nephew Lakhan in adoption, hence the appellant, who was the brother of the said Lakhan, was feeling aggrieved that it was only on account of Mohd. Usman that Gama had not given any property to him. In our view, there was no reason for P.W. 2 Smt. Rabia Bano to speak lie with respect to the same. With regard to immediate motive, P.W. 2 Smt. Rabia Bano and P.W. 5 Kitabun Nisa have stated in their evidence that on the date of the incident at about 12.30 P.M. the appellant had come to the house and asked Mohd. Usman deceased to give his Ghur (Compost manure) to him to which Mohd. Usman deceased declined and that at the said time the appellant went away advancing threats. The said fact was also written in the first information report which was lodged promptly after the incident. We find no valid reasons to disbelieve P.W. 2 Smt. Rabia Bano and P.W. 5 Kitabun Nisa with respect to the same.

20. The learned counsel for the appellant has taken us through the evidence of the eyewitnesses and has tried to point out certain discrepancies in the same. He urged that there are contradictions on the point as to whether P.W. 2 Smt. Rabia Bano and P.W. 5 Kitabun Nisa were giving fodder to the cattle or were just sitting and making 'biris' when this incident occurred. In our view, the said discrepancy was not material because if this incident took place at the time when the said two ladies had just given fodder to the cattle and thereafter were sitting, the said discrepancy was natural. The learned counsel for the appellant also argued that there were discrepancies as to whether there was any tree in the court-yard of the house of the deceased and whether the deceased at the time of the incident was sitting under the neem tree. It may be observed from the site plan prepared by the Investigating Officer that towards south of the court-yard of the house of the deceased there was a small pathway going from east to west and just adjacent to the said pathway there was a neem tree. It is a matter of common knowledge that a neem tree has a huge growth and covers much of the adjoining land by its branches. Therefore, if the branches of the neem tree were extending to the court-yard of the house of Mohd. Husain (Usman) deceased, the version given by the eye-witness as was not belied when they stated that the deceased was sitting in his court-yard under the neem tree. The learned counsel also referred to us the

evidence of P.W. 2 Smt. Rabia Bano, where she was inquired as to whether there was any other neem tree in her court-yard. It appears that Smt. Rabia Bano P.W. 2 was just confused at that stage and therefore made a confused statement with regard to the presence of the neem tree in her court-yard. It seems that this witness was overawed by the Court atmosphere and the cross-examination and that it was due to the same that this witness made some confused statement regarding the location of the neem tree. Otherwise, P.W. 2 Smt. Rabia Bano was inmate of the house and it could not be argued that she was not aware about the number of neem trees at the place of occurrence.

21. The learned counsel for the appellant drew our attention to Exts. Kha-1 to Kha-8 and highlighted the contradictions in the statement made by the witnesses before the Investigating Officer under Section 161, Cr. P.C. and before the trial Court. In our view, the said contradictions are too minor to be attached any weight, specially when the said discrepancies do not go to the root of the matter and do not shake the basic version of the witnesses. It may be relevant to point out that the Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses now-a-days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. (See Appabhai v. State of Gujarat, AIR 1988 SC 696).

22. In Sohrab v. State of Madhya Pradesh, AIR 1972 SC 2020 (2024) the Supreme Court has observed as under ;--

'This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered...'.

23. In the result, therefore, we are of the opinion that the discrepancies pointed out by the learned counsel for the appellant do not go to the root of the matter and do not shake the basic version of the witnesses and therefore the same cannot be annexed with undue importance.

24. P.W. 2 Smt. Rabia Bano and P.W. 5 Kitabun Nisa have given consistent evidence. They have given material details of the incident. They were inmates of the house. They were, thus most natural witnesses. Both these witnesses were lent corroboration by the medical evidence and the first information report which was promptly lodged. We have been impressed by their evidence and we are of the opinion that the learned trial Court has rightly placed reliance upon them.

25. The learned counsel for the appellant has urged before us that P.W. 5 Kitabun Nisa was not present at the place of occurrence because she was married and, therefore, she was living at her-in-laws' place. This argument is without substance because P.W. 5 Kitabun Nisa had deposed that she was married at a few months after this incident. Therefore, her presence at the place of occurrence could not be doubtful.

26. The learned counsel for the appellant has argued before us that P.W. 1 Amanat Ali was a resident of a different village and that there was no occasion for him to have been present at the place of occurrence to witness this incident. We find no merit in the said argument because P.W. 1 Amanat Ali has deposed that his village Kakra and village Dubawal, where this incident took place are adjacent to each other, and that as already agreed he had come to the house of Mohd. Usman to accompany him to a feast in a neighbouring village. When this was so

and also when the report of the incident immediately after the occurrence was scribed by this witness it cannot be said that he was not present at the place of occurrence.

27. The learned counsel for the appellant has also urged before us that none of the neighbours was examined and the same made the case of the prosecution doubtful. In this respect it may be observed that the prosecution discharged the said witnesses on the ground that although they were summoned, yet they did not turn up and that because the defence side had frightened them, hence they had not been coming forward to depose in favour of the prosecution. In our opinion, if the said neighbours were not prepared to come forward and appear as witnesses in this case, the prosecution could not help the matter.

28. Lastly, the learned counsel for the appellant has urged before us that all the three eye-witnesses examined in this case being relations of the deceased were interested witnesses and that therefore it would not be safe to rely upon them. In our view, the witnesses whose near relative had been killed would not spare the real assailant and falsely implicate another person (See *Machhi Singh v. State of Punjab*, AIR 1983 SC 957).

29. It may be observed that this incident took place in broad daylight in the courtyard of the house of Mohd. Usman, where the inmates of the house etc. could have no difficulty in seeing and recognising the assailant. It does not stand to reason that the said witnesses would have spared the real assailant and instead of him would have falsely implicated the appellant in this case.

30. Therefore, to conclude, we are in agreement with the learned trial Court that it was the appellant and none else, who had committed the murder of Mohd. Usman deceased.

31. Accordingly, this appeal is dismissed and the conviction and sentence of the appellant under Section 302 I.P.C. is upheld. The appellant is on bail. He shall be taken into custody forthwith so that he may serve out the sentence of life imprisonment imposed on him.

