

Lodai and anr. Vs. the State

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Court : Allahabad

Decided On : Dec-12-1990

Reported in : 1991CriLJ1878

Judge : R.K. Saksena and ;U.K. Verma, JJ.

Acts : [Indian penal Code, 1860](#) - Sections 34 and 302; ;[Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 174 and 311

Appeal No. : Criminal Appeal No. 2665 of 1978

Appellant : Lodai and anr.

Respondent : The State

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : D.S. Tewari and ;S.D.N. Singh, Adv.

Disposition : Appeal dismissed

Judgement :

R.K. Saksena, J.

1. The appellants, Lodai and Girja, sons of Kalu, residents of village Pura Gaderia, police station Koraon, District Allahabad, stand convicted Under Section 302 of the penal Code with the aid of Section 34 there of, for committing the murder of their

real uncle, Lallu, aged about 55 years, on the 22nd of May, 1977 at about 5-30 a.m. at a distance of about 200 yards from his house, which is in close proximity to the houses of the accused-appellants, by inflicting injuries with Kulhari and lathi, as a consequence where of his death was immediate. Each has, therefore, been sentenced to suffer imprisonment for life, per judgment and order dated the 11th of Sept. 1978, passed by Sri M. L. Singhal, the then Additional Sessions judge, Allahabad.

2. The appellants had a real brother, Batai, who died about two years before the incident under consideration, leaving behind his wife, Mst. Itwari, who had some agricultural land also. Second marriage in the Biradari to which the appellants and their first cousin Lalman (P.W. 1) belong is recognised. Lallu, deceased wanted Mst. Itwari to remarry his son, Lalman, and he succeeded in implementing his desire, shortly before the incident in which Lallu lost his life, Mst. Itwari started residing with Lalman as his wife. The relations between the members of the family of Lallu, on one hand, and his nephews (appellants) on the other, were not happy on account of a dispute regarding Sehan land in Abadi. The conduct of Lallu deceased in successfully persuading Lalman and Mst. Itwari to live as husband and wife further annoyed the appellants and according to the prosecution, this supplied immediate motive for finishing off Lallu.

3. Shortly put the prosecution case is that while Lallu (deceased) was going to offer usual prayer in the temple of Shankerji : situate at a distance of about 12-13 lathas from his house, towards south, on the 22nd of May, 1977 at about 5-30 a.m. murderous attack was made by the appellants, Lodai with a kulhari and Girja with a Lathi, at a distance of about 3 lathas from the temple. The injuries inflicted on the person of Lallu were on vital parts (head and chest) as a result of which his death was instantaneous.

4. A written report of the occurrence was allegedly produced by Lalman (P.W. 1) at police station Koraon on the same day at about 9-05 a.m. It recites that the occurrence was witnessed by him. Mool Chand. (P.W. 2) Ram Garun (P.W. 3) and Dadari (not examined). The crime was registered and after usual investigation, charge-sheet was submitted against the appellants, who were tried for committing

the offence of murder of Lallu in pursuance of their common intention and prior plan.

5. Three persons, namely Lalman, Mool chand and Ram Garun were examined by the prosecution to substantiate its claim. Lalman, who is the son of the deceased testified the facts leading to the incident and also the facts which provide motive for the alleged murderous attack. Mool Chand and Ram Garun respectively. P.Ws. 2 and 3, did not support the prosecution version that they had witnessed the assault on Lallu. After obtaining permission from the trial judge, the prosecution cross-examined them to show that they had been got at by the accused-appellants and were, therefore, suppressing true facts. Observing that the evidence of Lalman (P.W. 1) receives corroboration from the material on record and attending circumstances and that the same is worthy of credence, the learned trial judge has convicted and sentenced the appellants as stated above. Feeling dissatisfied with the decision, both the accused have come-up in appeal.

6. We have heard the learned counsel for the parties and have carefully considered the material on record. It may be recalled that Mool Chand and Ram Garun, respectively P.Ws. 2 and 3 stated that before they reached the place where Lallu was lying dead with bleeding injuries, the assailants had fled away. In other words, they neither saw the assailants in action nor in flight. Considering it to be expedient in the ends of justice and to extract truth from them, permission was granted to the prosecution to cross-examine them. The grant of such permission does not amount to an adjudication by the court as to the veracity of the witness. There is no rule or law that the evidence of such a witness is to be excluded from consideration altogether or it is to be completely effected. The correct rule is that either side may rely upon his evidence and that the whole of the evidence so far as it affects both the parties, favourably or unfavourably, must be considered for what is worth. We would, therefore, refer to such portion of their testimony which appears to be convincing and acceptable; even the trial court has rightly adopted this course.

7. In this legal back ground let us consider the necessary ingredients of the offence with which the appellants were charged. There can be no doubt in the last

that Lallu died of violence. The medical evidence which is above reproach and from any blemish shows that the injuries sustained by Lallu, primarily on his head were sufficient in the ordinary course of nature to cause death, which must necessarily be immediate. Further, the finding of the learned trial court in regard to 'place' of occurrence was not assailed before us on behalf of the appellants. The availability of rice, Chandan and Lota near the dead body, which was found at a few paces from the temple, where the idol of Shankerji, is installed, clearly indicates and corroborates the evidence of Lalman (P.W. 1) that while his father (Lallu) was going to offer prayer in the temple, he was fatally wounded.

8. Further-more, the statement of Lalman that the occurrence took place at a time when it was twilight and the visibility was not at all affected receives corroboration from the statements of Mool Chand (P.W. 2) and Ram Garun (P.W. 3). It was the time when normally villagers go to attend the call of nature every morning Mool Chand (P.W. 2) stated, 'Savera-ho-raha-tha' and that after giving fodder to his cattle, he was going to ease himself towards a talab located in the east of his house. It was not disputed that the place of occurrence is to the east of the house of his witness. A suggestion was put to the witness in cross-examination. On behalf of defence that murderous assault on Lallu was made at a time when it was dark and that the assailants escaped un-identified under the cover of darkness. It was categorically and candidly denied by him. The third witness, Ram Garun, clearly stated that it was about 5-30 in the morning when he heard shouts of Lalman (P.W. 1) while he was going to ease himself. He then rushed towards the temple of Shankerji and found the dead body of Lallu in the field of Bhuneshwar. His further evidence will be referred to at proper place. Suffice it to point out that the witness was not cross-examined at all by the defence. There is, therefore, no reason why the evidence of this witness and also the testimony of Mool Chand (P.W. 2) be not accepted in regard to the time of occurrence. We have thus enough material to establish the claim of the prosecution that Lallu was mortally wounded at about 5-30 a.m. on the 22nd of May, 1977 i.e. at a time when it was twilight and the sun was about to appear on the horizon. The visibility at this time is not at all affected and one can easily see upto some distance, if there is no obstruction. Our attention was drawn towards a sentence, which appears in the cross-examination of Lalman (P.W. 1). It is reproduced below:

Jab ghatana hui us samay thora thora andhera tha Uske, ek-ya-do minat ke bad suraj-nikla.' (para 15).

9. The learned counsel for the appellants vehemently contended that the assault was made at a time when it was dark. The contention, in our opinion, is devoid of merit. Lalman is an illiterate rustic villager, who was then in his teens. If we read both the sentences together we can reasonably infer that the witness refers to that part of the day which fair just before the coming of the sun on herizon; this is the time when there is enough light. The learned counsel for the appellants, on the basis of the contents of small intestines as found by the doctor at the time of postmortem examination (full with partially digested food) urged that the death occurred at a time when it was dark. There is nothing on record to show as to when the deceased had taken meals and, therefore no calculation is possible. It may also be noted with importance that the doctor had found only 6 teeth in the mouth of Lallu who was then aged about 55 years. He had obviously difficulty in chewing and therefore, digestion might have been delayed. However, in the absence of any evidence, we cannot travel in the realm of surmises and conjectures. We are convinced and are in perfect agreement with the court below that the prosecution and the witnesses have given correct time of occurrence and have no hesitation in rejecting the bald suggestion on behalf of defence that Lallu was assaulted at a time when it was sufficiently dark and the assailants made good their escape unidentified under the cover of darkness.

10. For the said reasons we conclude in agreement with the learned trial court and hold that the prosecution has established beyond doubt the date, time and place of occurrence, the identity of the deceased and the cause of his death, which was homicidal.

11. This brings us to the crucial finding of the court below that the appellants, who figures as accused in the first information report also, were the real assailants, as stated by Lalman (P. W. 1) who has been found to be truthful and reliable witness. He stated that while he was providing fodder to his cattle, tithered outside his residential house, which is at a distance of about 200 yards from the scene of occurrence, he saw his father going towards the temple of Shankerji from the

house with a Lota and Ganji for offering prayer. His further statement is that hardly 20-25 paces were left in reaching the temple, when his father was assaulted by these two appellants.

12. The learned counsel for the appellants contended that the court below should not have attached weight to the testimony of Lalman, who is an interested and partisan witness. It is well settled that interested evidence is not necessarily unreliable evidence and partisanship by itself is not a good ground for discrediting the sworn testimony. This has been emphasised through various decisions that it cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless it receives corroboration on material particulars by independent evidence. All that is necessary is that the evidence of such a witness should be subjected to a careful scrutiny and accepted with caution. If it is found on scrutiny to be intrinsically reliable, it may, by itself be sufficient to base a conviction thereon.

13. It is, therefore, idle to contend that because Lalman (P.W. 1) is the son of the deceased, his evidence is to be jettisoned. As a matter of fact such a person would be interested in bringing the real culprits to book. True, cases are not wanting where one clutches at the commission of a crime as an opportunity to falsely implicate his own enemy to feed fact his own grudge, but the instant case, in our opinion does not fall in that category. The appellants are first cousins of Lalman (real nephews of the deceased). They live in close proximity to the house of Lalman and are virtually neighbours. We cannot conceive that this Young boy (Lalman) acted as a computer and within no time decided to make these appellants responsible for fatally wounding his father. We make this observation for the reason that while he was crying near the dead body of his father, he had taken the names of both the appellants as assailants. Ram Garun (P.W.3) stated that when he reached the spot on hearing the shouts, he heard Lalman saying, 'Girja and Lodai Markar Bhage Ja Rahe Hai'. The witness was not cross-examined at all by the defence. Almost identical statement was given by Mool Chand (P.W. 2) who was also not questioned on this point. It is, thus, evident that this young boy, Lalman who was still in his teens had no opportunity to deliberately spin out and fabricate a case against such persons, who are closely related to him. The

learned counsel for the appellants contended that the above noted sentence appearing in the statements of the said two witnesses cannot be read in evidence. It being a narration by Lalman, a few minutes after the incident. The contention, in our opinion, is not well founded. There is no time gap and it was a spontaneous assertion made immediately after the fall of the curtain by a person who had witnessed the actual assault. A perusal of the site plan would show that the place of occurrence was visible from the sehan of the residential house of Lalman; there was no obstruction at all to affect the visibility. The said piece of evidence is, therefore, admissible. However, assuming that the above-noted evidence of the two witnesses (Mool Chand P.W. 2 and Ram Garun P. W. 3) is to be ignored, the fact remains that there was no opportunity for deliberations and consultations till the report of the occurrence was made with promptitude. The recitals of this report clearly corroborate the testimony of Lalman on each material and relevant point.

14. In this connection the learned counsel for the appellants referred to an admission of Lalman which is to the effect that a dispute regarding 'Sehan' land in Abadi was going on between the deceased and the appellants. On this basis, it was contended that the deceased was inimically disposed towards the appellants and, therefore, Lalman has implicated the appellants, in this crime. The suggestion is too far-fetched to be seriously entertained. There is nothing to show that any litigation was pending in court. Such petty disputes of 'Sehan' and 'Abadi' are common features in villages and we are not prepared to accept that for this reason, Lalman and the members of his family decided to make the appellants responsible for the murderous attack on Lallu and, thus, to implicate the appellants in such a heinous crime. We have absolutely no hesitation in rejecting the suggestion. We are in perfect agreement with the court below that it is not a case of false implication.

15. Yet another argument of the learned counsel for the appellants was that as the medical evidence is inconsistent with the claim of Lalman (P.W. 1) in regard to a weapon (Kulhari) used in the assault, the claim be rejected. This contention is based on the non-availability of incised wounds on the person of Lallu. The doctor who conducted an autopsy on the dead body of Lallu had found lacerated wounds on the head region and contusions on other parts of the body. True, 'Kulhari' has

normally sharp-cutting edges but if on account of non-user the edges become blunt, its blow will cause a lacerated wound. The Medical Officer has also accepted this position in his evidence. We may point out that a 'Kulhari' with blunt edges will for all intents and purposes, be called a 'Kulhari' and it is quite impossible for a person running towards the assailants from a distance to see as to whether or not the 'Kulhari' had sharp-edges. Since Lalman saw a 'Kulhari' being used in the assault, he described it in the first information report accordingly. The argument appears to have been advanced even before the trial court, but it was held to be devoid of merit; the trial Judge was justified in not attaching any weight to it. It is, therefore, idle to contend that the evidence of Lalman does not received corroboration from medical evidence.

16. Again, on the basis of the difference that appears in the inquest report and the relevant entry made in the General Diary, in respect of the distance between the police station and the village of incident, it was vehemently urged on behalf of the appellants that there has been pre-clocking of the report. Yet another submission in the same continuation was that although the name of one of the witnesses examined in the case by the prosecution figures in the inquest-report as a 'Panch' there is no mention in the inquest report about the nature of the weapon used in the assault. It is significant to note that the investigating Officer who prepared the inquest-report was in the witness-box, but he was not called upon to explain the discrepancy. Moreover, the object of the proceedings Under Section 174 of the Code of Criminal Procedure, 1973, i.e. preparation of inquest-report, has been shown by the Hon'ble Supreme Court in the case of *Podda Narayana v. State of Andhra Pradesh* reported in (1975) 4 SCC 153 : (1975 Cri LJ 1062). The relevant observation is reproduced below:

'The object of the proceedings Under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings Under Section 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details

in the inquest report.'

17. Regard being had to the facts and circumstances pointed out above we are in perfect agreement with the learned trial Judge that the appellants are the Killers. They made a murderous assault on the person of Lallu pursuant to a prior-plan and common intention of finishing him off and achieved the evil design. It is significant to note that the prosecution has shown motive also which prompted and actuated the appellants to end the life of Lallu. Mst. Itwari was married to Batai, real brother of the appellants, who died about two years before this occurrence. Lallu had succeeded in persuading Mst. Itwari to become wife of Lalman and it is in evidence of Lalman that a few days before this incident, Mst. Itwari had started living with him as his wife. Mst. Itwari had some agricultural land also and Lalman stated on oath, that those fields are in his possession. This is noteworthy that this significant and material portion of his statement was not touched at all in cross-examination on behalf of defence. It necessarily follows that not only a young widow of the family of the appellants, but land had also gone to the branch of Lallu, who was responsible for it. This supplied immediate motive to finish off Lallu. The bald suggestion of the defence that the assailants escaped unidentified and that the appellants were falsely shown as culprits in the first information report is liable to be rejected as baseless and without foundation. The appellants have rightly been found guilty Under Section 302 of the Penal Code read with Section 34 thereof and each deserves the sentence awarded to him.

18. Before parting we would like to place on record our appreciation, not only about the course adopted by the learned trial Judge (Sri M. L. Singhal, the then, Additional District & Sessions Judge, Allahabad) for bringing on record important and relevant evidence which was very essential for the just decision of the case, by exercising powers Under Section 311 of the Criminal P.C. 1973, but also about the pains taken by him in sifting and marshalling the evidence on record.

19. In the result, the appeal fails and is hereby, dismissed. Both the appellants, Lodai and Girja, be taken into custody to serve out the sentence awarded to each of them.

20. Office to send a copy of this order to the court below for immediate compliance. Compliance report be submitted within two months of the receipt of the copy of the order.

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