

Gaital and ors. Vs. the State

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Court : Allahabad

Decided On : Jan-13-1988

Reported in : 1988CriLJ960

Judge : S.I. Jafri and ;G.K. Mathur, JJ.

Appellant : Gaital and ors.

Respondent : The State

Judgement :

S.I. Jafri, J.

1. Gaital, Ram Sajivan, and Smt. Dabri were convicted under Sections 302/149, 148, 452/149, I.P.C. and they were sentenced to undergo life imprisonment, two years R. I. and four years R. I. respectively under the aforesaid sections of the Penal Code by Sri H. C. Lal, III Additional Sessions Judge, Allahabad by his judgment and order dated 4-8-1978. Along with the appellants, Smt. Phool Kali and Suraj Pal were also tried but they were acquitted by the trial Court.

2. In the instant appeal, one Panna Lal had been done to death and the appellant Gaital was said to have been armed with axe, Ram Sajivan with pistol and Smt. Dabri with Bugda. Smt. Phool Kali who has been acquitted by the trial Court, was alleged to be bare handed and Suraj Pal was one of the three unknown assailants who were alleged to have been equipped with gun, Sabbal and Farsa.

3. The allegations of the prosecution are that deceased Panna Lal was facing trial for the murder of Ram Khilawan and Harish Chandra deceased who had been done to death few months prior to the occurrence within the circle of police Station Dhumanganj and on the date of occurrence the deceased Panna Lal was on bail in that case.

4. Gaital and Ram Sajivan appellants are brothers and the aforesaid deceased Ram Khilawan was their own brother and they were maternal uncles of Harish Chand deceased. Smt. Dabri is the widow of Ram Khilawan deceased while Smt. Phool Kali is the sister of deceased Harish Chand.

5. The occurrence is alleged to have taken place in village Chilla Shehbazi within the circle of Police Station Poora Mufti situated at a distance of two miles from the village of occurrence at about 1 p.m. on 8-12-1976. The case of the prosecution in brief is that P. W. 1 Jawahar Lal at about 1 p.m. on 8-12-1976 was attending to his cattle along with his ploughman Badri Prasad in front of his house, situated at the outskirts of village Abadi and he happened to have heard the reports of the gun-fire coming from the side of village Abadi. Soon after he saw deceased Panna Lal running towards his house chased by accused Gaital, Ram Sajivan, Smt. Dabri and Smt. Phool Kali and three unknown assailants who were variously armed with deadly weapons as enumerated above. Finding Panna Lal deceased being chased by the accused persons, the complainant Jawahar closed his door. Panna Lal deceased vaulted over the wall of his house and gained entry into his house and as soon as he tried to secure himself by closing the main door, the assailants, pushed open the door and gained entry into the court-yard of the house whereupon Panna Lal deceased entered in the second room and bolted the door from inside but the accused persons managed to enter the room by breaking the door and killed the deceased Panna Lal by means of their respective weapons. The occurrence was alleged to have been witnessed by the complainant, his plough-man Badri Prasad, Chatur and many other persons of the village. On the alarm raised by complainant Jawahar, the accused persons after killing the deceased Panna Lal and leaving behind their arms, bolted away from the scene of occurrence.

6. After the occurrence, Jawahar Lal prepared a report of the occurrence at his house in the presence of witnesses and proceeded to the Police Station, Poora Mufti where he handed out his report to Subedar Yadav, Head constable P.W. 4 who prepared a chik report on the basis of the said report. The Head constable also registered a case against the appellants and Smt. Phool Kali in the general diary of the Police Station.

7. P.W. 3, R. S. Tiwari, S. I. who was present at the Police Station at the time of registration of the case, recorded the statement of Jawahar Lal and Subedar Yadav, Head constable at the Police Station. The Sub-Inspector thereafter started for the village Chilla Shehbazi where he arrived at about 4 p.m. He found the dead body of the deceased-Panna Lal in the second room of the house of complainant-Jawahar Lal. He also found a country made pistol, axe, Bugda, Subbal and Farsa inside the room. He also found empty cartridges therein. The Sub-Inspector prepared requisite recovery memos regarding the aforesaid property. He also prepared inquest report on the dead body of the deceased-Panna Lal and sent the same in a sealed cover to the mortuary for post-mortem examination through constables.

8. Witnesses Badri Prasad and Chatur could not be examined by him as they were not available. Later on, investigation of the case was taken over by Station Officer, Baladin Yadav. The Investigation Officer recorded the statements of Chatur and Badri Prasad next day at about 9 a.m.

9. After completion of the investigation the Sub-Inspector submitted charge-sheet Ex.Ka. 16 against the appellants and Smt. Phoolkali. Charge-sheet Ex.Ka 17 against Suraj Pal was submitted subsequently in the Court.

10. Dr. D. P. Singh, Medical Officer, Mod Lal Nehru Hospital, Allahabad conducted autopsy on the dead body of the deceased-Panna Lal on 9-12-1976 at 3.10 p.m. and he found the following injuries.

1. Incised wound 4 1/2' x 1/2' x bone deep extending from the front of nose up to middle of right side forehead with fracture of frontal bone.

2. Multiple incised wound varying in size from 1' x 1/2' to 3' x 1/2' in an area of 12' x 8' over the right side face and head. Right ear is cut in the (middle). Fracture of right side mandible, right maxilla and right temporal and parietal bone into multiple pieces brain there is coming out of wounds.
3. GSW of entry 1/4' x 1/4' x muscle deep on the left side face, away from the left eye, margin blackened and inverted.
4. GSW of entry 1/4' x 1/4' x muscle deep on the left side face 1' below No. 3, one shot has been recovered from left side face muscle.
5. Two GSW of entry 1/4' X 1/4' X muscle deep each on the left side neck, 1' apart and 1' behind left ear. Margin blackened and inverted. Two shots were recovered from the left side neck, along with two small pieces.
6. Incised wound 7' x 1 1/2' bone deep on the front and right side neck in the middle with underlying blood vessels cut. Trachea and oesophagus cut and 4th cervical vertebra '. fractured.
7. Incised wound 3 1/4' x 1' x chest cavity deep, above the right cervicle.
8. Incised wound 2 1/2' x 1/2' x bone deep on top of head.
9. Incised wound 3 1/2' x 1/2' x bone deep, 1' below injury No. 8.
10. Incised wound 2' x 1/2' x bone deep on the back of head 1 1/2' below injury No. 9.
11. Incised wound 3 ' x 1/2 ' x bone deep on the back of head 1/2' below injury No. 10.
12. Incised wound 1' x 1/2' x bone deep on the left side head 3 1/2' above left ear. Fracture of parietal bone present.
13. Incised wound 2'x 1/2' x bone deep on the left side head 2" behind injury No. 12.

14. Incised wound 6" x 2 1/2' x chest cavity deep on the left side outer part of chest below the axilla.
15. Incised wound 2 1/2' x 1/2' x bone deep on the front of left wrist joint, outer part with fracture of radius bone.
16. Incised wound 1/2' x 1/4' x bone deep on the back of left hand, middle.
17. Incised wound 1' x 1/2' muscle deep on the front of left thigh, 3 above knee.
18. Incised wound 4 1/2' x 1/2' x muscle deep on the back of right fore-arm 6' below elbow.
19. Incised wound 2' x 1' bone deep on the back of right fore-arm, 2' below injury No. 19 radius and ulna bones fractured.
20. Abrasion 2' x 1' x on the right side back middle.
11. The trial Court upon Consideration of the evidence produced in the case, convicted and sentenced the appellants as enumerated above. However the trial Court acquitted Smt. Phool Kali and Suraj Pal accused.
12. The accused pleaded not guilty to the charge and they attributed their false implication in the case to enmity.
13. The prosecution examined five witnesses in all and out of them, Jawahar Lal P.W. 1 and Chatur were examined as eyewitnesses of the occurrence. Chatur P.W. 2 did not support the prosecution case and as such he was treated hostile.
14. The conviction of the appellants rests upon the evidence of Jawahar Lal complainant (P.W. 1).
15. Here it is worthy of being observed that plurality of evidence is not a necessity of law in order to prove the prosecution case. What is scrutible is whether the single testimony of the witness radiates confidence or not and the Courts can Very well base conviction believing prosecution version on the single testimony of a witness. The prime consideration worth bearing in mind is that whether it will be

safe to place implicit reliance on the testimony of solitary witness in the case.

16. Here we proceed to examine the testimony of solitary witness Jawahar Lal P.W. 1 whether he can be implicitly relied upon and his evidence inspires confidence or not.

17. Jawahar Lal P.W. 1 has deposed that at the time of occurrence, he was attending to his cattle along with his plough-man Badri Prasad at about 1 p.m. when he heard the reports of gun-fire coming from the abadi side of the village and as soon as his attention was attracted towards that side, he noticed Panna Lal deceased running towards his house being hotly chased by appellants and Smt. Phool Wati along with three other unknown persons who were armed with deadly weapons as stated supra. On seeing Panna Lal, approaching towards his house he closed his door whereupon Panna Lal crossed over the wall of his house and gained entry into the house. The accused persons also entered the house by pushing open the door. Panna Lal deceased entered the second room of the house but the accused persons followed him and they killed the deceased in the aforesaid room by means of their respective weapons. According to the witness, the occurrence was seen by him, his plough-man Badri Prasad and Chatur P.W. 2. In the first Information Report lodged by him, he merely mentioned that the occurrence had been witnessed by him and other persons of the village. He has further deposed that after the accused persons had run away from his house, he had prepared a report of the occurrence at his house itself and went to the Police Station and, there, he handed over his report to the Head constable.

18. In cross-examination, the witness admitted that Raseela Lal is his real brother and there was bad blood between Raseela Lal and Gaital appellant in connection with Bagh Bahar, of a certain grove. However he added that a rapprochement had been brought about between them subsequently. It has also been admitted by him that prior to the present occurrence, a dacoity had taken place at his house as a consequence of which, Gaital and others had been interrogated, by the Police and on this account, Gaital had abused his brother Raseela Lal.

19. The defence has filed 22 Ka-1 and 22 Ka-2. 22 Ka-2 is a carbon copy of the report dated 13-7-1958 under Section 504/506 lodged by Raseela Lal against

Gaital and his father Mahadeo. The other report 22 Ka-1 is dt. 14-1-62 Under Section 504/506/352, IPC lodged by Raseela Lal against Khilawan deceased, real brother of Gaital.

20. We have thoroughly gone through the pros and cons of the facts and circumstances in the base. We have also taken into consideration the extent of bad blood between Raseela Lal and the accused supported by Ex.Ka-22-1 and Ex.Ka 22-2 whereby the defence has attempted to prove animus against the accused of Jawahar Lal P. W. 1 who is the real brother of Raseela Lal, and upon a conspectus of the facts and circumstances in entirety, we find it difficult to hold that Jawahar Lal is a wholly reliable witness and his testimony can be relied upon in the absence of independent corroboration which is lacking in this case. The testimony of P.W. 1 Jawahar Lal is not thoroughly free from doubt in view of the animus shown by-means of documents filed in this case and also in view of lacking independent corroboration.

21. Having considered all the facts and circumstances as discussed above, we are of the view that the judgment and order passed by III Addl. Sessions. Judge, Allahabad deserves to be set aside. The conviction and sentences recorded by the trial Court against the appellants are liable to be set aside.

22. In the result, the appeal is allowed. The conviction and sentences recorded by the trial Court against the appellants are set aside. The appellants are on bail. They need not surrender. Their bail bonds are discharged.

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