

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

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Court : Allahabad

Decided On : Apr-18-1996

Reported in : 1997(1)ALT(Cri)22; 1997CriLJ260

Judge : N.L. Ganguly and ;R.N. Ray, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304 and 304(2); Code of Criminal Procedure (CrPC) - Sections 428

Appeal No. : Criminal Appeal No. 3075 of 1979

Appellant : Gopi and anr.

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : M.D. Misra, ;S.S. Tiwari and ;A.K. Gupta, Advs.

Judgement :

R.N. Ray, J.

1. This appeal has been preferred by the convicted appellants against the judgment of conviction and order of sentence passed by Sri. M. M. Saran, learned Sessions Judge, Lalitpur, in Session Trial No. 38/79 Under Section 302/34 I.P.C. which arose out of Crime No. 119 dated 27-4-78 of police station Kotwali district

Lalitpur.

2. The prosecution case is that on 27-4-78 at about 2.00 p.m. at village Azadpura a quarrel took place between the mother of Dal Chand and the wife of accused Gopi regarding one Balti. The witnesses Gore Lal and others separated the two persons. After 15-20 minutes the deceased Keshri came there after taking bath and objected to Gopi, who was still abusing. Gopi came out of his Khalihan and caught hold of the hands of deceased Keshri and commanded Lakkhi to assault Keshri. At this Lakkhi gave a lathi blow on the head of Keshri. Keshri fell down on the ground. The witnesses intervened. Gopi and Lakkhi went away. The deceased Keshri was taken on a cart to the hospital. The doctor examined the injured Keshri and declared him as dead. Dal Chand dictated the F.I.R. of the occurrence and lodged the same at police station Kotwali on which the case was registered.

3. The prosecution has examined Gore Lal (P.W. 1) Dal Chand brother of the deceased (P.W.2), S.I. Brijraj Singh (P.W.3), Ghanshyam Das (P.W.4), Scimial Kashi Nath (P.W.5), Parsadi (P.W.6), Constable Basiruddin by affidavit (P.W.7), Shyam Manohar Tripathi, I.O. (P.W.8) Dr. Abdul Halim (P.W.9) and Ganga Singh, I.O. (P.W. 10).

4. After the occurrence when the F.I.R. was lodged on the dictation of P.W.2, Dal Chand which was noted by P.W.4, Ghanshyam Das at police station Kotwali district Lalitpur; P.W. 8 S.I. Shyam Manohar Tripathi took up the investigation. He recorded the statements of Dal Chand and reached the district hospital. He found dead body lying in Thcla. He prepared inquest report and sketch of the dead body in the presence of the witnesses. He also sealed the dead body and sent the same for postmortem examination through Chalan Lash. He also took in his possession the blood stained Kathri under a proper seizer memo. He sent the dead body for post-mortem examination through constable Basiruddin. He then recorded statement, of Ram Prasad alias Parsadi, inspected the site of occurrence and took into possession blood stained and unstained earth and sealed them, prepared proper seizure lists and took the signature of the witnesses on the same.

5. The I. O. searched for the accused in their houses but they were not available there. He recorded the statements of Semual Kashi Nath, Gore Lal and other

witnesses. He continued the search-of the accused till 29-4-79. Under the orders of the S. P. the case was handed over for investigation to P. W. 10 S. O. Ganga Singh. P.W.K), S.O. Ganga Singh lookup the investigation on 26-6-78. After receiving the post-mortem examination report and after completion of other formalities he submitted charge sheet Under Section 302/34 I.P.C. against the accused-appellants.

6. Learned counsel for the appellants submitted that the witnesses are chance witnesses and their evidences are inconsistent to the alleged facts of the case. It has been submitted that Gore Lal had no occasion to be present there at the odd hours of the day and P.W. 2, Dal Chand was resident of the house of the deceased and he had no business to be present there but it appeared that all of them i.e. P.W.1, P.W.2 and P.W. 6 were present there only to be the witnesses of the occurrence. It has been submitted that P.W.6 is a man of different locality and was on friendly terms with Gore Lal and he has come to that village but none of the person had been examined to substantiate his contention that he actually went to that village to demand his dues from anybody. Moreover, this witness was not named in the F.I.R. It has been submitted that a quarrel was going on for the dispute of Balti and abusement were being showered and it has also been evidenced that the deceased had started abusing over the dispute of Balti which enraged accused Gopi who caught hold the hands of the deceased and asked the accused Lakkhi to assault him and appellant Lakkhi gave one Lathi blow on the head of the deceased who fell down. It has been submitted that even the case of the prosecution is accepted in its totality still due to this exchange of abusement between the deceased on one hand and Gopi on the other hand the accused persons were flared up. On the spur of the moment Gopi asked Lakkhi to assault the deceased and Lakkhi had given a lathi blow on the head of the deceased. The whole intention was to teach a lesson to the deceased for hurling abuses but unfortunately that resulted in the death of the deceased. So, the Court may be pleased to hold that it was not a case Under Section 302/34 I.P.C. but a case Under Section 304/34 I.P.C. at best and accordingly the appeal be partly allowed, and the sentence be accordingly reduced.

7. It has also been submitted that the case is pending since 1979 and as it was not a case of murder but a case Under Section 304(2) I.P.C. so Court may be pleased to award adequate fine which may be paid to the legal heirs of the deceased and the accused-appellant may be given at least one month time to pay the fine.

8. Learned A.G.A. has also submitted that it is a case Under Section 304(2) I.P.C., the accused-appellant may be convicted and sentenced accordingly. Regarding the quantum of sentence learned A.G.A., Sri K. C. Saxena has submitted that there is inordinate delay in disposal of this appeal, so the Court may consider that accused appellant be directed to pay a reasonable fine which may be paid to the legal heirs of the deceased as compensation which really may entail to peace in the locality and deceased heirs may be benefited thereof. It has been submitted that both the appellants were in jail for some period as an under-trial prisoner and also served in jail before their release on bail.

9. Duly considered the submissions.

10. P.W. 1 is the resident of the locality and he has deposed that he was sitting nearby to the place of occurrence at the time of the alleged incident and hearing noise he went there. So he cannot be said as a chance witness and his presence at the place of occurrence was quite possible and he stood the cross-examination all through in unshaken fashion. In this connection it should kept in our mind that all evidences, as given, show that the abusements between the parties were going on for some time. That noise most likely to attract persons present nearby which fit in with common course of conduct of the village people. P.W. 2 is the cousin brother of the deceased and his house was situated close to place of occurrence and as the abuses are going on between his cousin brother on one side and Gopi on the other side so he was naturally expected to reach at that place. Hence we do not consider he was a chance witness. Regarding P.W. 6 we find that he often used to visit that village and he was in friendly terms with Gore Lal and it was winter days so at that relevant time his presence at that place was quite possible. Moreover we do not find any reason as to why this P.W. 1 and P.W.6 would depose falsely as there was no evidence of animosity of these witnesses with the accused appellants. Evidence of P.W.2 should not be brushed aside simply

because he was a close relation. Hardly a close relation will spare the real culprit and see some other person convicted to feed fat his grudge/Moreover, nothing tangible had transpired during evidence that P.W. 2 had animosity with the accused appellants. The evidences of P.W. 1, P.W.2 and P.W.6 remained unshaken during entire course of cross-examination. From the evidences of the doctor and perusal of post-mortem- report is proved beyond doubt that there was only one injury on the head which could be caused by a blunt weapon like Lathi and which resulted in death of the deceased. The evidence of I.O. and blood stained and plain earth taken together along with the evidences of eye-witnesses fixed the P.O. In the circumstances we concur with the findings of the learned Court below that the accused Lakkhi assaulted a lathi blow on the head of the deceased who was being caught/held up by the accused Gopi. The deceased died out of the head injury caused by a lathi blow. Since it was a single lathi blow and inflicted on the spur of the moment we hold that it was. a case Under Section 304(2) I.P.C. and not an offence Under Section 302/34 I.P.C. Accordingly the appeal stands partly allowed.

11. The accused persons held to be guilty of the offence Under Section 304(2)/34 I.P.C. and each of them is sentenced to suffer R.I. for six years. But since the appeal is pending for a long period and the offence was of the year of 1979 and the appeal is pending since 1979 we think that in view of the decisions 1988 Suppl SCC 557 : AIR 1988 SC 2136 (Sunder Singh v. State of Rajasthan), AIR 1993 SCC (Crl.) 189 (sic) accused persons may not be sent to jail. Inordinate delay in disposal of the appeal has been held by Hon'ble Supreme Court as mitigating circumstance for reduction of sentence. In this connection reliance may be had from the decisions as reported in AIR 1991 SC 279 (Balram v. State of Orissa) and 1993 Suppl (1) SCC 616: (AIR 1992 SC 2152).

12. In view of above discussions it is further ordered that each of the appellants to pay a fine of Rs. 10,00.07- to be deposited within one month in the Court below then they will be released and may not be directed to serve out the sentence as ordered above. Fine if realised be paid to the heirs of the deceased. If the fine is not deposited within one month as directed above then the accused persons will be taken into custody upon cancellation of the bail bonds and they may be sent to

jail to serve out the balance period of sentence. It is further ordered that the period in which the accused appellants were in jail as under trial prisoners that shall be set off against the terms of sentence Under Section 428 Cr.P.C.

N.L. Ganguly, J.

13. I agree:

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