

Chhuttan Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-14-1995

Reported in : 1996CriLJ649

Judge : G.S.N. Tripathi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307 and 324; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Criminal Appeal No. 2379 of 1979

Appellant : Chhuttan

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Umesh Chandra Mathur and ;N. Virendra Saran, Advs.

Disposition : Appeal dismissed

Judgement :

G.S.N. Tripathi, J.

1. Both these appelas arise out of judgment dated 23-7-79 passed by Illrd Adi. Sessions Judge, Moradabad in S.T. No. 742 of 77 and 690 of 78. By these judgments, the accused Mullue and Chhuttan have been convicted under Section

324 IPC and sentenced to undergo 3 years' R. I. Accused Ram Charan has been convicted under Section 324/34 IPC and sentenced to undergo 3 years' R. I.

2. The prosecution case started on the basis of an oral F.I.R., Exhibit Ka I, lodged by Hari Shankar, P.W. 1 at P. S. Bilari on 8-10-76 at 7 P.M.

3. He has alleged that he is a resident of village Aparput Tandi. His father died long ago. Thereafter, his mother remarried with Sheo Charan Pandit and he was living along with the mother at the house of the complainant. The real father of complainant had left 28 bighas as of land. Meanwhile the complainant's mother developed illicit relations with the accused Ram Charan. This development was not liked by the complainant. He several times asked his mother to desist from such relationship, but she did not relent. Nay, this objection of the complainant was not relished by her as well as Ram Charan. The accused are on friendly terms with each other. On 8-10-76, the complainant was going to village Khekda. On the way a little away from village Khekda, the accused intercepted him. Ram Charan had a lathi. Mullu had a pistol and Chhuttan had a knife. Ram Charan first asked him to behave properly if he wanted to live in the village and he should not poison his mind more than needed. The complainant did not say anything except denying any motive on his part. At the behest of Ram Charan, Chhuttan pierced his knife in the body of the complainant. Thereafter Ram Charan further exhorted Mullu to fire at the complainant which he did. Thereafter, an alarm was raised. The persons nearby assembled. The accused retreated with their weapons.

4. The complainant arrived at the police station Bilari on 8-10-76, where he reported the matter. In fact, the incident took place in the jurisdiction of some other police station. The records were transmitted to that police station, from where the investigation started and finally a charge sheet was laid.

5. The complainant was examined at P.H.C. Bilari in the same evening at 9.30 P.M. by Dr. Y. K. Jain. He found the injuries as noted in the judgment of the learned Addl. Sessions Judge. The injuries were fresh in duration; X-ray was advised. X-ray was done at the District Hospital, Moradabad. No bony structure was found to be fractured.

6. After usual investigation, a charge sheet was laid against the accused under Section 307 IPC.

7. The prosecution examined P.W. 1 Hari Shankar, the complainant. He has narrated the entire prosecution story as stated briefly in the F.I.R.

8. P.W. 3, Khilendra Singh is the person who alleges himself to be the owner of a plot nearby. After hearing the alarm, he reached the spot and saw the accused causing injuries to the complainant. He had identified these accused in the Court. But the police did not arrange any identification parade. The learned Addl. Sessions Judge has not placed much credence upon the testimony of this witness.

9. P.W. 2, Dr. Y. K. Jain had proved the injury report and has opined that the incised wounds would have been caused by knife and the fire arm injuries could have been caused by the pistol and all the injuries could have been received at about 6. p.m. on the date of occurrence. The only cross-examination meted out to this witness was that the injuries could have been about 6 hours old and no injury was dangerous to life.

10. After perusal of the X-ray report, the doctor opined that no bony structure was found damaged.

11. P.W. 4 Hukum Chandra Jain, S.I. was the Investigation Officer attached to police Station Mainather. The documents were received at police station Mainather on 10-10-76 and investigation was entrusted to him. He recorded the statement of complainant and other witnesses on 19-10-76 and inspected the spot on that date, prepared the site-plan and submitted the charge sheet against the accused on 15-11-77. He also proved the writings of the police station Bilari, where the F.I.R. was initially lodged and other documents relating to the police station.

12. The accused in their statements under Section 313 Cr. P.C. had denied the allegations against them. They have said that on account of enmity, they have been falsely implicated. Mullu has said that he has enmity with Gopi and Chatar Singh of that village, who had family terms with the complainant and on their behest, the complainant has been falsely implicated him. Chhuttan has said that

he was implicated at the behest of Smt. Rama Devi, who had good terms with the complainant. Ram Charan after denying the allegations has said that on account of village partybandi and influence of the police, he has been falsely implicated.

13. The accused have led no evidence in their defence.

14. After perusal of entire evidence and circumstances on the record, the learned Addl. Sessions Judge convicted the accused and sentenced them as noted above.

15. Feeling aggrieved, the accused have filed these appeals.

16. I have heard learned counsel for the parties at stretch and gone through the record. I find that there is absolutely no force in these appeals and they deserve to be dismissed in toto.

17. The incident took place on 8-10-76 at about 6 P.M. The FIR was lodged in the same evening at about 7 P.M. at a lonely place far away from the notice of the complainant. Therefore, there was no time available to the complainant to manipulate a wrong case against the accused or to consult or confabulate with somebody before lodging the FIR. The mental state of the complainant was not such that he could think deeply over the matter and implicate the accused at the behest of his neighbours without any rhyme or reason. Moreover, the police of Bilari could not have enmity with these accused in order to suggest some false cases against these persons. In these circumstances, it is difficult to believe that the complainant would have come with a wrong case on such a short interval against the accused. The F.I.R. is very prompt.

18. The medical examination closely followed. Doctor found that the injuries were fresh. When Dr. Jain, P.W. 2 was in the witness box, no question was put seriously disputing the existence of injuries or their nature as well as types of weapons used as deposed by Dr. Jain. From this corroborative cross-examination, it can be safely assumed that the accused were reconciled to this position that the complainant had received injuries as narrated by them.

19. Not only this, the complainant was cross-examined at considerable stretch. Paragraph 19 of the cross-examination contains a suggestion that in the darkness

some unknown looter looted him and caused injuries to him and at the instance of the neighbours of the complainant, a false case has been lodged. It means that the existence of injuries on the person of the complainant is not disputed. Rather it is admitted to the accused.

20. In this set of circumstances, it is difficult to believe that the injured person, if he had an opportunity to correctly identify his culprits, would let them go and substitute them by some unconcerned persons only on account of enmity and there is no reason why he would not implicate his real assailants.

21. The accused belong to the same village to which the complainant belongs. They were known to him from much before. Nature of injuries shows that the assailants came in a very close bodily touch with the victim and he had ample opportunity to identify them. At least the person who caused the incised wounds must have touched the body of the victim. Blackening and charring were found around injury No. 6. It means that they were also caused not from a long distance.

22. Apart from this, the incident took place at about 6 P.M. The sun had not set. There was sufficient light. The complainant has clearly stated in paragraph 2 of the examination in chief that the incident took place around 6 P.M. Darkness set in one hour thereafter. On this point, he has not been cross-examined at all. Therefore, the time of occurrence is fixed to be around 6 P.M. Under these circumstances, the complainant had ample opportunity to identify his real assailants. The accused also unwittingly helped him in correctly identifying them by coming very close to him.

23. The injuries also go to show that the complainant would not have become unconscious and thus there was absolutely no difficulty in the complainant's identifying his assailants, unmistakably. This way, I find that after such a short interval before the FIR was lodged, the complainant could not have implicated any false person in place of his real assailants, as he could not have concealed anyone. This is a clinching circumstance which goes in favour of the prosecution to show that only the real assailants have been implicated in this case.

24. This is a very unfortunate case in which the complainant, who was only 23 years old on the date of occurrence, has come with allegations touching the sexual character of his real mother. This lady became widow when this boy Hari Shanker was about 7-8 years old. She quickly transformed herself into a wife of Sheo Charan Lal without any loss of time, when this complainant was about 8 years old. The complainant resides with Sheo Charan Lal and his mother in the same roof. Sheo Charan Lal left his earlier residence and started residing with the complainant and his mother. The time passed and it seems that the sweet relations between Sheo Charan Lal and the complainant's mother could not retain their old depth and this lady develops relations with Ram Charan accused. Complainant has stated that Ram Charan started visiting his house frequently and the complainant had grown meanwhile and he was about 23 years old at the time of occurrence. Thus he was capable of understanding the relations between his mother and Ram Charan Lal accused. Naturally, he would not like his mother to have relations with Ram Charan accused. This would not have been relished by him as well as the society. Under these circumstances, any person worth the salt placed in the position of Hari Shanker, complainant would resist such amorous relations between the complainant's mother and Ram Charan. This is how the complainant asked his mother not to advance further with Ram Charan. But she did not oblige him by relenting. Ram Charan also did not discontinue his visits. But the complainant became a thorn in their eyes. It is with this motive that the crime has been committed in the present case.

25. The complainant has clearly stated that the other two accused were on friendly terms with Ram Charan and they joined him in committing this crime in pursuance of their relationship with each other. This is nothing unnatural. Because friends join each other on a common platform. A friend in need is a friend indeed. Ram Charan was in need of friend who could silence Hari Shanker so that he could not resist or object to his relations with the complainant's mother. These two accused Mullu and Chhuttan readily obliged Ram Charan by joining his party and this way all the accused were present on the spot when the crime was committed.

26. The entire thrust of the cross-examination was that minutest details were not noted in the FIR or under Section 161 Cr. P.C. For instance, in paragraph 5 of the

cross-examination, it has been said that the complainant did not mention that the accused were on friendly terms. The complainant admitted that the accused belong to different castes. In paragraph 10, it was asked that he did not mention that the accused Chhuttan had caused 4 or 5 injuries to him. He has mentioned only this much that he had caused knife injuries. In paragraph 18, it has been asked that the name of Khilendra Singh, P.W. 3 was not mentioned in the FIR. These minutest details could not have been narrated by the complainant when he was in the state of shock, agony and terror. He had received serious injuries. His mental balance could not have been expected to be of such a high state that he could write a thesis in the shape of FIR. It has been repeatedly held by the courts that the FIR is not supposed to be an encyclopaedia containing all minutest details which the learned cross-examiner after several years of practice puts to the complainant in the witness box. The complainant is an illiterate person. Whereas, the cross-examiner is a learned counsel having several years of experience to his credit. The complainant is not expected to know criminal law. Whereas, the cross-examiner is well versed in this branch of criminal law.

Hence, there cannot be any comparison between the intelligence of a cross-examiner and that of an ordinary villager like the complainant. Therefore, this sort of cross-examination leads us nowhere. Not only this, such micre-ommissions add a flavour of truth and naturalness in the testimonies of witnesses. They show that the witness has not been tutored and his version is not of a Parrot. That shows that testimony of such a witness should be relied upon by the courts.

27. The FIR, in short, contains everything upon which the prosecution case has been built-up, namely, the date, time and place of occurrence, name of the accused, the weapons used by them and motive for the crime. If the F.I.R. contains these things, which the present F.I.R. contains, then it becomes a beautiful piece of evidence, which can be used for corroborative purposes as done in this case. Therefore, no fault could be found with such a F.I.R. Further, it is found that it was lodged without any loss of time, without any tutoring, consultation or confabulation. It becomes an impregnable fortress of the prosecution.

28. I have thread-bars examined the statement of the complainant Hari Shankar on this point. He has not faltered. He has proved the illicit relations between his mother and the accused Ram Charan. He has proved the role played by the accused, the exhortation by Ram Charan. He has faithfully not stated that Ram Charan caused any injuries to him. He simply exhorted the other two accused for causing injuries. Therefore, it shows that the complainant did not want to exaggerate the role played by RamCharan. Otherwise, he could have done so. This again shows that the complainant is eschewing falsehood and sticking to the truth.

29. Regarding the weapons, there is absolutely inconsistency between the F.I.R. and the testimony of this witness. Similarly, regarding the dale, time and place, despite a lengthy gruelling cross-examination, this witness the remained unscathed. Under these circumstances, I find that the solitary statement of the complainant coupled with the prompt FIR and medical examination tendered by Dr. Jain, is sufficient to record conviction in this case. It does not need further corroboration in any other corner. He has said that soon after the incident, it had rained and the blood had washed out. The unfortunate part of the case is that the incident took place within the jurisdiction of Police Mainather and the report was lodged at police station Bilari as it was closer to the spot. The documents were received by the I.O. on the following day. The I.O. visited the spot on 19-10-76 i.e. about 11 days after the occurrence. In these circumstances, much evidence from the spot could not be collected. Not only this, Dr. Jain found the injuries bleeding and were accordingly fresh. Whether the blood spots were found on the rickshaw or not, it not very material piece of evidence in this case in such circumstance when the investigation was taken in the hands by the police personnel of another police station. Therefore, I find that except for minor tit-bits here and there in the statement of complainant, nothing material could be pointed out on the basis of which it could be said that the witness is not stating the whole truth. The learned lower court examined the statement of this witness with a close angle. I have myself very closely examined the same as I am conscious of this fact that he is the solitary witness in this case and he had some sort of enmity too towards the accused Ram Charan as he had developed amorous relations with his mother. But he had absolutely no ill-will or enmity with the accused Mullu and Chhuttan. The

suggestion that these accused have been implicated at the behest of complainant's neighbours, has not been substantiated. Under these circumstances, the involvement of all the three accused in the present case is proved beyond any doubt with the common intention to murder or cause injuries.

30. There is another witness P.W. 3 Khilendra Singh He states that he had his plots are nearby and after hearing the alarm raised, he reached the spot and saw the accused causing the injuries to the complainant and running thereafter. The learned lower court has not placed reliance on his testimony. I also ignore his testimony.

31. In the statement of the I.O., nothing material has been found. Therefore, his evidence remains formal and of corroborative value only as regards the process of investigation.

32. This way, after a close scrutiny of the entire evidence and circumstances on the record and after analysing the judgment of the lower court, I find myself in total agreement with the decision arrived at by the learned lower court. The trial court had an opportunity to watch the demeanour of the witnesses, a privilege not extended to the appellate court. In absence of any misdirection on the part of the learned trial court, his appraisal of evidence should be respected. In this case, after a complete and thorough examination of the evidence on the record, I find that the learned trial court has come to a correct conclusion. Therefore, the findings recorded by him are upheld.

33. Learned trial court has taken further precaution. Instead of convicting the accused under Section 307/IPC, with the aid of Section 34 IPC, he has convicted them under Section 324 IPC only. As regards the sentence, the learned Judge has been very soft. Further softening of the sentence is not deserved by the accused nor it is required by law and justice. Therefore, even in the sentence, I do not wish to interfere.

34. The appeals are dismissed. The accused are on bail. Their bail bonds and surety bonds are cancelled. They shall be taken into custody by the C.J.M. concerned forthwith, who shall submit a compliance report to this court within a

month.

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