

Gopal Singh Vs. State of U.P

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Court : Allahabad

Decided On : Jul-23-1996

Reported in : 1997CriLJ3006

Judge : N.S. Gupta, J.

Acts : Indian Penal Code, 1860 - Sections 302, 307, 304(I), 304(II) and 324; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 770 of 1980

Appellant : Gopal Singh

Respondent : State of U.P

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : D.N. Wali, ;Viresh Mishra and ;S.S. Agnihotri, Advs.

Disposition : Appeal dismissed

Judgement :

ORDER

N.S. Gupta, J.

1. Accused appellant Gopal Singh, who was convicted by Sri B.L. Hajelay, the then Sessions Judge, Pithoragarh, under Section 304(1), I.P.C. and under Section

324, I.P.C. vide judgment and order dated April 5, 1980 and was sentenced to undergo R.I. for a period of five years under the first count and 18 months under the second count has come up in appeal before this Court.

2. The prosecution story, briefly stated, is as follows :

The deceased Vikram Singh, injured Mohan Singh P.W. 5 and complainant Naresh Singh P.W. 1 were all real brothers. They were resident of Village Karayat, patti Bisung, District Pithoragarh. The accused appellant Gopal Singh was Bahnoi of Vikarm Singh and others. P.W. 8 Smt. Sarswati Devi was wife of the accused, who was married to him about 2-3 years before the date of occurrence of this case. The prosecution claimed that there was an old enmity in between the family of the deceased and the accused. Smt. Sarswati Devi was married to the accused by her father for making the relations of the two families cordial, but despite this marriage the relations of the deceased and the accused appellant continued strained.

3. On 17-9-78, the injured Mohan Singh had gone to play foot-ball at Lohaghat District Pithoragarh. After playing foot-ball, he returned along Gopal Singh P.W. 6 and Diwan Singh P.W. 4 some-time in the evening. At about 9 or 9.30 a.m. Mohan Singh, Diwan Singh, Gopal Singh were sitting for purposes of taking dinner. On hearing the noise of the deceased Vikram Singh, they came out and saw the accused Gopal Singh having a knife in his hand and the shirt of the deceased was lying on the ground. Mohan Singh injured P.W. tried to pacify the accused appellant. Thereupon accused appellant assaulted Mohan Singh by means of the knife. He, thereafter assaulted the deceased Vikram Singh and caused injuries on the chest of the deceased. The deceased fell down and died. The mother of the accused appellant came there. Diwan Singh P.W. 4 and mother of the accused-appellant took the accused to his house. Naresh P.W. 1 the brother of Mohan Singh lodged a written report Ex. Ka-12 with the Patwari Kama Karayat. P.W. 9 Hariram Tamta who was working as Patwari/Police Officer Kama Karayat took up the investigation of the case. He recorded the statement of Nareh Singh P.W. 1 and rushed to Lohaghat hospital where he found injured Mohan Singh. He thereafter, came to the scene of occurrence. He prepared the inquest report in

respect of the dead body of the deceased and sent the same for post mortem examination. Sri Hari Ram Tamta recovered blood stained earth from the scene of occurrence and prepared recovery memo in respect of the same. He Inspected the scene of occurrence and prepared site plan, Ex. Ka-16. He arrested the accused at about 10 a.m. on 18-9-78 from his house and recovered blood stained knife, which was used in causing injuries to the deceased and Mohan Singh, at the instance of the accused. He also recovered pant which was stained with blood. He recorded the statement of Diger Singh, Jaman Singh, Gopal Singh son of Narayan Singh, Smt. Sarswati Devi and Diwan Singh and after needful investigation into the matter, submitted chargesheet against the accused.

4. Dr. Ashok Shartna P.W. 7 who was working as Medical Officer at PHC Lohaghat on 17/18th November, 1978 medically examined the injured Mohan Singh at about 12.30 in the night. He found the following injuries on his person :

1. Stab wound 2 cm x 1 cm x bone deep 4 cms upwards and with swelling backwards from left anterior sup-iliac spine. Swelling was around the wound and was 8 cm x 8 cm fresh bleeding seen.

2. Stab wound 3 cm x 1 x 3 cm (deep) on front aspect of right thigh 14 cm vertically below the right anterior sup iliac spine.

3. Swelling 5 cm x 5 cm 6 cms horizontally inwards from injury No. 2.

The injury No. 1 was kept under observation. All the injuries were simple. The injuries Nos. 1 and 2 were caused by sharp edged object and injury No. 3 was due blood collection. All these injuries were fresh.

5. Dr. Ashok Sharma conducted autopsy on the dead body of the deceased on 18th September, 1978. According to him, the deceased was aged about 42 years. Rigour mortis was present in all the four limbs. He found the following ante mortem injuries on the person of the deceased :

1. Punctured wound 1.5 cm x 1 cm x bone deep 1 cm vertically below to the left anterior supiliac spine.

2. Penetrating wound 2 cm x 1 cm x 7 cm away from left nipple at about 50 ' clock position, directed upwards, and medially penetrating lung left.

3. Lacerated wound 1 cm x 1 cm muscle deep (swelling cm above the upper margin of left petella).

On internal examination, Dr. Sharma found 6th and 7th ribs of left side cut. The pleura was punctured. The heart was empty. The left thoracic cavity was full of blood. In the opinion of the doctor, the deceased had died due to shock and haemorrhage, as a result of the aforesaid injuries. The probable time since death was one day.

6. Charges under Sections 302/307, I.P.C. were framed against the accused appellant. He pleaded not guilty and stated he has been falsely implicated in the case.

7. After needful trial into the matter, the accused appellant was convicted and sentenced as aforesaid under Section 304(1) and 324, I.P.C. by the trial Court, hence the appeal.

8. I have heard Sri D.N. Wali, learned counsel for the appellant, A.G.A. for the State; considered the facts and circumstances of the case and gone through the evidence on record.

9. It was vehemently argued by the learned counsel for the appellant that even according to the observations of the trial Court, mystery of the incident in question was not. unfolded and yet the learned Sessions Judge convicted and sentenced the accused appellant. It was urged on behalf of the accused appellant that the order of conviction and sentence passed by the trial Court was bad in law. I am unable to agree.

10. I find from the record of the case that as many as three eye witnesses of the occurrence were examined by the prosecution before the court below. They were Diwan Singh P.W. 4, Mohan Singh injured P.W. 5 and Gopal Singh son of Narain Singh P.W. 6. All these witnesses have clearly and consistently stated that on 17-9-78 they all had gone to Lohaghat and had returned from there some-time in the

evening. They stated that at about 9 or 9.30 p.m. on 17-9-78 when they were sitting in the house of Diwan Singh, they heard the noise of Vikram Singh and on hearing the same they came out on the road and found there that the deceased Vikram Singh was saying that he was surrounded by the accused appellant Gopal Singh. The accused appellant Gopal Singh was armed with knife. When these witnesses asked the accused appellant not to quarrel, the accused appellant assaulted Mohan Singh P.W. 5 and caused injuries to him. He thereafter, assaulted the deceased Vikram Singh by means of the knife. After sustaining the injuries, Vikram Singh fell down in the field and had died. The accused appellant was thereafter taken to his house. The injured and his brother Naresh Singh went to Lohaghat where Mohan Singh was admitted in the hospital and Naresh Singh went to lodge the report about this occurrence. Even if for a moment, the testimony of Diwan Singh P.W. 4, Gopal Singh P.W. 6 is excluded from consideration on the ground that they were not named as witnesses of the occurrence in the first information report, the fact remains that Mohan Singh P.W. 5 was injured very clearly that the injuries found on his person were caused by the accused appellant and that, the accused appellant was also responsible for causing injuries by knife on the chest of Vikram Singh and that the deceased Vikram Singh had died as a consequence of the injuries caused to him by the accused appellant.

11. It is clearly proved by the medical evidence of Rs. Ashok sharma P.W. 7 that he had medically examined the injured Mohan Singh on the intervening night of 17/18th September, 1978 at about 12.30 and had found stab wound as noted above on his person. Dr. Sharma also conducted autopsy on the dead body of the deceased on 18th September, 1978 at about 3 p.m. and had found punctured wound on the dead body of the deceased, he clearly opined that the injuries found on the person of the injured Mohan Singh and the deceased Vikrm could be caused by means of knife on the date and time of the occurrence suggested by the prosecution.

12. It is clearly proved by the evidence of Smt. Sarswati Devi (P.W. 8) wife of the accused appellant that her father had married her with the accused appellant for making the relations of the two families cordial but in spite of this marriage,

strained relations of the two families continued. She has clearly stated that at about 9 or 9.30 p.m. on the date of the occurrence, the accused appellant was annoyed and was abusing his brothers. She stated that after about 1/2 an hour, Diwan Singh brought her husband Gopal Singh and that at that time the accused appellant was armed with knife. There was no shirt on his body. On enquiry, Diwan Singh informed that the accused had committed the murder of Vikram Singh, elder brother of Smt. Sarswati Devi and that he had caused injuries to Mohan Singh younger brother of this witness. Thus the circumstance that the relations of the accused appellant and deceased Vikram Singh and injured Mohan Singh were strained since before the date of the occurrence of this case, the circumstance that on the date of occurrence, the accused appellant was feeling angry and was abusing the brothers of his wife, namely, the deceased and Mohan Singh injured, the circumstance that he went out from his house for serving meals to his father who used to reside Kama Karayat that is near the place of occurrence and that the circumstance that just after half an hour he was brought back to his house and that at that time he was armed with a knife and that the man who brought him at the house informed that the accused appellant was responsible for the murder of the deceased and causing the injuries to injured Mohan Singh leave no room to doubt that the accused appellant was responsible for causing knife injuries, to deceased and Mohan Singh P.W. 5.

13. I should state here that Naresh Singh P.W. 2 who lodged the first information report about the occurrence is a simple villager living in the remote area of a hill district like Pithoragarh. He cannot be expected to be well conversant with the intricacies and niceties of law. Thus the Omission of the names of the Diwan Singh P.W. 4 and Gopal Singh son of Narain Singh P.W. 6 as eye witnesses of the occurrence from the first information report Ex. Ka. 1 was rather natural omission committed by the simple villager. The circumstance that Diwan Singh, Mohan Singh P.W. 5 and Gopal Singh P.W. 6 all had gone to Lohaghat for playing football, the circumstance that they had all returned together in the evening on 17-9-78 and the circumstance that they all were sitting and talking together at the house of Diwan Singh where they intended to take dinner together and the circumstance that there they heard the noise of the deceased and on hearing the noise they together came on the road and the accused appellant assaulted

Mohan Singh with knife and the appellant further assaulted the deceased by means of the knife make the evidence of all these three eye witnesses, namely, Diwan Singh P.W. 4, Mohan Singh, P.W. 5 and Gopal Singh P.W. 6 quite natural. As stated above, at any rate even if the testimony of Diwan Singh P.W. 4, and Gopal Singh P.W. 6 is excluded from consideration, for (which I am not prepared), the fact remains that the guilt of the accused appellant for causing fatal injuries to the deceased Vikram Singh, as a consequence of which the deceased had died and further causing injuries by means of knife to Mohan Singh and thereby committing an offence under Section 304(i) and 324 I.P.C. stands fully proved by the solitary evidence of the injured witness Mohan Singh P.W. 5.

14. The suggestion of the defence that the injuries were caused by Diwan Singh and the accused appellant was falsely implicated in the case is devoid of merit on the very face of it, for the reason that the accused appellant in this case was the husband of the deceased's sister and if the appellant was not responsible for the offence in question, Mohan Singh and his brother Naresh Singh who are also real brothers of the appellant's wife Smt. Sarswati Devi, could not have involved the accused appellant in the offence in question. It was argued on behalf of the accused appellant that the accused appellant was serving in armed forces. He was serving for the cause of nation. The occurrence may have been done by him under grave and sudden provocation or exceeding the right of private defence. It was urged on behalf of the accused appellant that the conviction of the accused appellant under Sec. 304(I) I.P.C. should be altered to Sec. 304 (II) I.P.C. and that the period of sentence already undergone by him should he considered as sufficient. I have given my thoughtful consideration to the submission made by the learned counsel for the appellant, and have also gone through the facts and circumstances of the case.

15. I find from the record of the case that the deceased was aged about 42 years, at the time of his death. The injured Mohan Singh was aged about 33 years. The accused appellant in his examination under Sec. 313 Cr. P.C. stated his age about 20-21 years. It would thus be seen that the accused appellant was youngman of 20-21 years at the time of occurrence. Even if it be believed that the accused was provoked, and had committed the murder of the deceased under some

provocation, the fact remains that the injuries caused by him to the deceased were sufficient in the ordinary course of nature to cause death. When the appellant had assaulted one man after the other, that is, Mohan Singh and the deceased, who were both his brothers-in-law and when it is clear that there was old enmity in between the parties and in spite of the marriage of accused appellant and the sister of the deceased the relations of the two families were not improved, it would be deemed that the accused appellant had caused injuries to the deceased with knife with intention to cause such bodily injuries as were likely to cause death. The offence punishable under Sec. 304 (II) I.P.C. is also punishable with imprisonment of ten years or fine or with both. The offence under Sec. 324 I.P.C. is punishable with imprisonment of three years or fine or with both.

16. It would thus be seen that the learned trial court has already inflicted half of the sentence permissible in law. The argument of the learned counsel for the accused appellant built upon the case law of *Shubrati v. State* reported in 1959 A.L.J. 423 on the point of the facts of the case, as also on the point of punishment is of no help to the accused appellant. Thus having regard to the facts and circumstances of the case and gravity of the matter and the evidence on record, I am of the opinion that there is no scope for any interference in the sentence awarded to the accused appellant by the trial court.

17. I accordingly hold that the appeal has got no force and is hereby dismissed. The appellant, if on bail, shall be taken into custody forthwith to serve out the sentence according to law.

18. Let the record of the case be sent to the learned Sessions Judge concerned for needful compliance.