

Parmanand and anr. Vs. the State

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Court : Allahabad

Decided On : Jul-11-2003

Reported in : 2004CriLJ968

Judge : U.S. Tripathi and ;D.P. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 300

Appeal No. : Crl. A. No. 2098 of 1981

Appellant : Parmanand and anr.

Respondent : The State

Advocate for Def. : A.G.A

Advocate for Pet/Ap. : Satish Trivedi, ;Pt. Mohan Chandra, ;R.S. Khushwaha and ;P.N. Gangwar, Advs.

Disposition : Appeal dismissed

Judgement :

U.S. Tripathi, J.

1. This appeal has been directed against the judgment and order dated 8-9-1981 passed by the then 1st Additional Sessions Judge, Barielly in S. T. No. 79 of 1981 convicting the appellant Parmanand under Section 302 I. P. C. and appellant Hari

Ram under Section 302 read with Section 34 I. P. C. and sentencing each of them to undergo imprisonment for life.

2. The prosecution story, briefly stated, was as under :--

Kundan Lal (50) deceased resident of village Siraura, P. S. Bhojipura, district Bareilly was real brother of Gendan Lal, the father of appellants Parmanand and Hari Ram. Gendan Lal had another son Hardwari. Kundan Lal had no male issue and had only one daughter named Smt. Nanhi, who was married with Ajudhia (P.W.1), resident of village Ashpur, P. S. Hafizganj, district Bareilly, Kundan Lal deceased was living separately from his brother Gendan Lal. Kundan Lal owned about 35 Bighas agricultural land, which was jointly recorded in his name and in the name of Gendan Lal, but each of them had got separated their share by mutual agreement. Kundan Lal had given his land on Batai (crop share basis) Since Kundan Lal had no male issue the appellants wanted to take his land and had also threatened him that in case he did not transfer his land in their favour they would kill him. On 1-4-1980 at about 12.30 P. M. appellant Parmanand again threatened Kundan Lal deceased to transfer his land in his favour otherwise he would kill him. Kundan Lal deceased had lodged report (Ext. Ka-17) of the said incident at police station Bhojipura.

3. Apprehending danger of his life at village Siraura, Kundan Lal deceased had come to his daughter's house at village Ashpur and was residing there after 1-4-1980. After a month of it Gendan Lal father of the appellants came to Kundan Lal at village Ashpur and apologized for mistake of his sons and asked him to go to his village but Kundan Lal deceased refused. Then Gendan Lal asked him to give his land to him on Batai. Kundan Lal deceased agreed to it and gave his land to Gendan Lal on Batai. Thereafter, Gendan Lal had sent wheat of his share to Kundan Lal deceased.

4. On 12-11-1980, a day before the occurrence of this case, Hardwari, brother of the appellants came to Kundan Lal at village Ashpur at about 10.00 A. M. and asked him to go to his house to take paddy of his share. Kundan Lal deceased agreed to it and told that he would come next day. On 13-11-1980 at about 8.00 A. M. Kundanlal along with Ajudhia (P. W.1) and Mangali (P. W. 2) started for village

Siraura in a bullock cart and they reached at the Chaupal of appellants at about 10.00 A. M. There they took their meals. The appellants asked Kundan Lal deceased to go to Khalihan to take paddy of his share. Kundan Lal deceased proceeded to Khalihan along with appellants Parmanand and Hari Ram as well as Ajudhia (P.W.1) and Mangali (P. W.2). When they reached at a distance of about one furlong towards west of the village abadi in between Jwar Arhar and Jwar Patsan fields appellant Hari Ram whipped out a country made pistol from his waist and pointing towards Ajudhia (P.W.1) and Mangali (P. W.2) asked them to go back. Due to fear Ajudhia (P.W.1) and Mangali (P.W.2) receded back 8 to 10 paces. Appellant Hari Ram stopped. Kundan Lal deceased. Then appellant Parmanand whipped out a sickle from his waist and inflicted the same on his abdomen. When Ajudhia (P.W.1) and Mangali (P.W.2) tried to raise alarm appellant Hari Ram again threatened them on the point of pistol that in case they raised alarm they would meet the same fate. Therefore, they could not raise alarm. Kundan Lal deceased fell down and died on the spot. Ajudhia (P.W. 1) came to Pradhan of the village and narrated the entire incident. Village people also assembled there. Thereafter, they asked him to lodge report. Ajudhia (P.W.1) got prepared (Ext. Ka-1) from one Niranjan and lodged the same at police station Bhojipur at 1.00 P. M.

5. Chik F. I. R. (Ext. Ka-2) was prepared by head Constable Madan Mohan Chaubey, who made an endorsement of the same at G. D. report (Ext. Ka-3) and registered a case under Section 302 I. P. C. against the appellants Paramanand and Hari Ram.

6. Investigation of the case was taken up by Sri L. N. Bharti. I. O. (P.W.5). The Investigating Officer reached the spot at 3.00 P. M., conducted inquest of the dead body of the deceased and prepared inquest report (Ext. Ka-4) and other relevant papers. He also took into possession blood stained and simple earth from the spot. He interrogated complainant Ajudhia (P.W.1) and other witnesses, inspected place of occurrence and prepared site plan (Ext. Ka-11).

7. Autopsy on the dead body of Kundan Lal deceased was conducted on 14-11-1,980 by Dr. K. S. Tiwari (P.W.6) who found one incised wound 10 cm x 12 cm on

the middle of abdomen 4 cm below xiphisternum extending below umbilicus with tailing as shown in diagram, downwards and laterally, margins clean cut, abdominal cavity deep, loops of intestine and omentum protruding out of the wound and cause of death due to shock and haemorrhage and he prepared post mortem report (Ext. Ka-19)

8. The I. O. arrested appellant Paramanand on 17-11-1980 and on his pointing out recovered country made pistol from Duranya river on 18-11-1980 and prepared recovery memo (Ext. Ka-15). On completion of remaining investigation submitted charge sheet against the appellants.

9. Cognizance of the case was taken up by the Magistrate, who committed the case to the Court of Session.

10. Appellant Parmanand was charged with offence punishable under Section 302 I.P.C. simpliciter and appellant Hari Ram was charged with offence punishable under Section 302 read with Section 34 I. P. C.

11. Appellants pleaded not guilty and contended that on the date of occurrence they were out of their village and when returned they came to know that Kundan Lal after taking breakfast was going to his daughter's house at village Ashpur and in the way some one murdered him.

12. The prosecution in support of its case examined Ajudhia (P.W.1) and Mangali (P.W.2) as witnesses of fact besides Ram Murti (P.W.3), Constable, Murari Lal (P.W.4), L. N. Bharti, I. O. (P.W.5) and Dr. K. S. Tiwari (P. W. 6). The appellants did not adduce any evidence in their defence.

13. The learned Sessions Judge on considering the evidence of prosecution held that the prosecution successfully proved the guilt of the appellant Parmanand for the offence punishable under Section 302 I. P. C. simpliciter and that of appellant Hari Ram for the offence punishable under Section 302 read with Section 34 I. P. C. With these findings he convicted and sentenced the appellants as mentioned above.

14. Aggrieved with their above conviction and sentence the appellants have preferred this appeal.
15. The appellant Paramanand died during pendency of the appeal as per report of the C. J. M., Bareilly dated 28-1-2003. Therefore, the appeal preferred by appellant Paramanand stood abated. There remains the appeal preferred by the appellant Hari Ram atone.
16. We have heard Sri P. N. Gangwar learned counsel for the appellant and learned A. G. A. for the respondent and have perused the entire evidence on record.
17. Before advertng to the contentions raised by learned counsel for the appellant we would like to give gist of prosecution evidence.
18. Ajudhia (P.W.1), son-in-law of Kundan Lal deceased, stated inter-se relationship of appellants with the deceased, which they have admitted. He further stated that Kundan Lal deceased had only one daughter who was married with him. Since Kundal Lal deceased had no male issue the appellants were threatening him to give his land to them otherwise they would kill him. Kundan Lal deceased had also lodged a report of threatening prior to Holi of the year of the occurrence. On the Holi of the year he brought Kundan Lal deceased to his house at village Ashpur and he was residing there. After a month of it Gendan Lal came to the deceased and apologized for mistake of his sons and asked him to go to his village. On his refusal Gendan Lal asked him give his land to him on Batai. Kundan Lal deceased agreed to it and gave him his land on Batai. The appellants sent wheat of the share of Kundan Lal. Thereafter, a day before the occurrence of this case at about 10.00 A. M. Hardwari brother of appellants came to his house and asked Gendan Lal in the presence of his (sic) Mangali (P.W.2), Rammurti (P.W.3), Ram Lal and others to go to his village to take paddy of his share. Kundan Lal told that he would come on next day. On next day i.e. 13-11-1980 Kundan Lal deceased along with him and Mangali (P.W.2) proceeded to village Siraura on a bullock cart and reached there at about 10.00 A. M. Leaving the bullock cart at the Chaupal of the appellants they took their meals there, (which they had taken from their house). The appellants asked Kundan lal deceased to go

to Khalihan to take paddy of his share. Kundan Lal deceased along with Ajudhia (P. W.1), Mangali (P.W.2) and appellants proceeded to Khalihan towards west of the village. When they reached at a distance of about one furlong towards west of village abadi in between Jwar Bajara and Jwar Patsan fields at about 11.00 A. M. the appellant Hari Ram whipped out a country made pistol from his waist and asked Ajudhia (P.W.1) and Mangali (P.W.2) to go back and stopped Kundan Lal deceased. Thereafter, appellant Parmanand whipped out a sickle from his waist and inflicted on the abdomen of Kundan Lal deceased due to which he fell down and died. Ajudhia (P.W.1) and Mangali (P.W.2) tried to raise alarm but appellant Hari Ram again threatened them on the point of pistol that in case they raised alarm they would meet the same fate. Thereafter, Ajudhia (P.W.1) came to Pradhan of the village, got prepared his report (Ext. Ka-1) and lodged the same at police station at 1.00 P. M.

19. Mangali (P.W.2) resident of village Ashpur stated that Kundan Lal deceased was residing at his village at the house of his son-in-law Ajudhia (P.W.1) from before eight months of the occurrence. Prior to it Kundan Lal deceased was residing at his village Siraura where he had his agricultural land. Kundan Lal deceased had a brother at village Siraura. The appellants Parmanand and Hari Ram were nephews of Kundan Lal deceased. Out of fear of the appellants Kundan Lal deceased was residing at village Ashpur. On the date of occurrence he along with Kundan Lal deceased and Ajudhia (P.W.1) had gone to village Siraura in a bullock cart, where he reached at 10.00 A. M. Appellants Parmanand and Hari Ram met there in their Chaupal. There they left bullock cart and after taking meals Parmanand asked Kundan Lal to go to Khalihan to take paddy of his share. Kundan Lal deceased along with appellants Parmanand and Hari Ram, Ajudhia (P.W.1) and the witness (Mangali) proceeded towards Khalihan. When they reached at a distance of one furlong towards west at about 11.00 A. M. Hari Ram whipped out a country made pistol and showing it to them asked Ajudhia (PW1) and him to go back and he stopped Kundal Lal deceased there. Parmanand whipped out a sickle from his waist and inflicted on the abdomen of Kundan Lal deceased. His abdomen was torn and intestines came out. When he and Ajudhia (P.W.1) proceeded further Hari Ram again threatened them to go back otherwise they would meet the same fate. Kundan Lal deceased fell down and died on the

spot. Blood had fallen on the spot. He and Ajudhia (P.W.1) came to village and Ajudhia narrated the incident to the Pradhan of the village. Ajudhia (P.W. 1) asked him to go to village Ashpur to give the massage.

20. Rammurti (P.W.3) resident of village Ashpur stated that Kundan Lal deceased was residing at the house of Ajudhia (P.W. 1) from before a year of his murder. A day before the murder of Kundal Lal deceased, his nephew Hardwari had come to the house of Ajudhia (P.W.1) at about 10.00 A. M. He was sitting in the Chaupal of Ajudhia (P.W. 1) at that time. Hardwari asked Kundal Lal deceased to go to his village to take paddy of his share. Kundal Lal deceased told that he would come next day. On next day he had seen Kundan Lal deceased, Ajudhia (P.W.1) and Mangali (P.W.2) going to village Siraura in a bullock cart.

21. Constable Murari Lal (P.W. 4) escorted the dead body of Kundan Lal deceased from the spot to mortuary. L. N. Bharti (P.W.5) is the I. O. of the case. He stated that after lodging report of the case he reached the spot at 3.00 P. M. where he conducted inquest of the dead body of the deceased and sent it for post mortem. Thereafter, he interrogated complainant Ajudhia (P.W.1) Pradhan of the village and other witnesses. On 17-11-1980 he apprehended appellant Parmanand and on his pointing out recovered a country made pistol from river Duranya and on completion of the investigation challaned the appellants.

22. Dr. K. S. Tiwari (P.W.6) who conducted autopsy on the dead body of the Kundan Lal deceased stated that he found following ante mortem injuries on the person of deceased :--

Incised wound star shaped as shown in the diagram measuring 10 cm x 12 cm on the middle of abdomen 4 cm below xiphisternum extending below umbilicus with tailing, as shown in the diagram, downwards laterally, margins clean cut, abdominal cavity deep, loops of intestine and omentum protruding out of the wound.

The internal examination showed that peritoneum was cut under the injury at many places and mesentery cut at three places. Peritoneal cavity contained 1.5 liters fluid blood. Stomach contained partially digested food material. Small intestine cut

at several places. Large intestine cut at three places. Cause of death was shock and haemorrhage due to ante mortem injury.

23. The appellants had not disputed their relationship with Kundan Lal deceased. They have admitted that Kundan Lal deceased had only one daughter, which was married with Ajudhia (P.W. 1) at village Ashpur. They have also not disputed death and cause of death of Kundan Lal deceased. On their own showing Kundan Lal was murdered on the date of occurrence. The medical evidence of Dr. K. S. Tiwari (P.W.6) clearly established that Kundan Lal sustained incised wound of 10 cm x 12 cm x abdominal cavity deep on the middle of abdomen which resulted into his death.

24. Date, time and place of occurrence are also not disputed by the appellants. According to ocular witnesses Ajudhia (P.W. 1) and Mangali (P.W.2) occurrence took place on 13-11-1980 at about 11.00 A. M. at village Siraura on footpath between fields. The Investigating Officer visited the spot at 3.00 P. M. and found dead body of Kundan Lal deceased lying there. Report of the occurrence was promptly lodged on the same day at 1.00 P. M. The distance of Police station was 2 km. The informant Ajudhia (P.W.1) stated that after the incident he came to Pradhan of the village where other villagers also assembled. He got prepared report of the occurrence and then lodged it at police station. The report was thus promptly lodged.

25. The motive of the offence was that Kundan Lal had no male issue and his only daughter was married with Ajudhia (P.W. 1) at village Ashpur. The appellants were pressurising Kundan Lal deceased to part with his land in their favour, which he refused. The appellants had also threatened about 6-7 months prior to the occurrence of this case regarding which Kundan Lal deceased had lodged report (Ext. Ka-17) on 2-4-1980. It is not disputed that Kundan Lal had no male issue. The lodging of the report on 2-4-1980 regarding threatening by the appellant Parmanand to the deceased on 1-4-1980 supported the evidence of Ajudhia (P.W. 1) regarding the motive. It is also proved from the evidence of Ajudhia (P.W. 1) Mangali (P.W.2) and Rammurti (P.W.3) that out of fear of the appellants, Kundan Lal deceased was residing at the house of his son-in-law from before 6-7 months

of the occurrence.

26. The contention of appellants as suggested to prosecution witnesses was that Kundan Lal was residing jointly with them and was not residing at the house of his daughter. But the ocular witnesses denied the above suggestion. The evidence of Mangali (P.W.2) and Rammurti (P.W.3) residents of village Ashpur have corroborated the fact that Kundan Lal deceased was residing at the house of his son-in-law from before 6-7 months of the occurrence. This period relates back to the threats given by Parmanand appellant on 1-4-1980. The appellants have not examined even a single person of their village to prove that Kundan Lal deceased was residing jointly with them till his death. As such the motive has been established.

27. The learned counsel for the appellants contended that the occurrence took place at village Siraura and Ajudhia (P.W. 1) and Mangali (P.W.2) who are residents of village Ashpur had no occasion to be present on the spot. The evidence of Ajudhia (P.W. 1) and Mangali (P.W.2) coupled with the evidence of Rammurti (P.W.3) clearly established that Kundan Lal deceased was residing at the village Ashpur and a day before the occurrence Hardwari brother of the appellants had gone to the said village and asked Kundan Lal deceased to come to his village to take paddy of his share. Thereafter, on next day i.e. on the date of occurrence, Kundan Lal deceased was going to village Siraura. Since he had to take paddy of his share and he was also apprehending danger from the appellants, it was but natural for him to take his son-in-law and a villager with him. Ajudhia (P.W. 1) and Mangali (P.W.2) have thus explained about their presence on the spot. They were cross-examined at great length but nothing could be elicited. The presence of Ajudhia (P.W.1) on the spot is further corroborated from the lodging of report at 1.00 P. M. and his interrogation by the I. O.1 on the same day at 3.00 P. M. The witnesses had given each and every detail of the occurrence and there is nothing in his evidence to doubt his presence and to disbelieve his veracity. Mangali (P.W.2) had also accompanied the deceased. There is also nothing in his cross examination to doubt his presence on the spot. The witness has no reason to depose falsely against the appellants.

28. The appellants were none else but cousins of the wife of Ajudhia (P.W.1) and they were well known to him. Mangali (P.W.2) has also stated that the appellants often visited his village Ashpur where their cousin sister was married and they were known to him from before. He had also no reason to depose falsely against the appellants. In this way the prosecution had proved the manner of occurrence and participation of the appellants.

29. The learned counsel for the appellants, however, contended that all the allegations regarding motive and commission of the murder were against the appellant Pramanand who has died and there is no evidence to prove that appellant Hari Ram shared common intention and therefore he could not be convicted with the aid of Section 34 IPC. Undisputedly, Hari Ram is the real brother of Parmanand and had equal motive to grab the land of the deceased though report dated 2-4-1980 (Ext. Ka-17) was lodged only against Parmanand but Hari Ram being real brother of appellant Parmanand had also motive.

30. The evidence on record clearly established that a day before the occurrence, Hardwari real brother of Hari Ram had come to village Ashpur to call Kundan Lal deceased to his village. On his request Kundan Lal deceased agreed to come to his village on the day of occurrence. On his reaching at the village at Chaupal of the appellants, the appellants Hari Ram along with Parmanand was present there and both of them asked the deceased to go to Khalihan to take paddy of his share. They also proceeded to Khalihan with the deceased. Hari Ram had concealed a country made pistol under his waist. When the deceased reached at lonely place in between fields of Jwar Bajara and Jwar Patsan, appellant Hari Ram whipped out a pistol which he had concealed in his waist and asked Ajudhia (P.W. 1) and Mangali (P.W.2) to go back and he stopped Kundan Lal deceased. Thereafter, Parmanand whipped out a sickle and inflicted on the abdomen of Kundan Lal deceased. Thereafter, again Hari Ram prevented Ajudhia (P.W. 1) and Mangali (P.W.2) from raising alarm on the point of pistol.

31. The Apex Court held in the case of Nandu Rastogi alias Nandji Rastogi v. State of Bihar 2002 Cri LJ 4698 : 2002 AIR SCW 4022 : (AIR 2002 SC 3443) as below :--

'Appellants along with three others came armed with country made pistols. They came together, and while two of them stood guard and prevented the prosecution witnesses from intervening, three of them took the deceased inside and one of them shot him dead. Thereafter, they fled together. To attract Section 34, I.P.C. it is not necessary that each one of the accused must assault the deceased, it is enough if it is shown that they shared a common intention to commit the offence and in furtherance thereof each one played his assigned role by doing separate acts, similar or diverse. The facts of the case are eloquent and the role played by Bal Mukund Rastogi of preventing the prosecution witnesses from going to the rescue of the deceased was the role played by him with a view to achieve the ultimate objective of killing Shankar Rastogi. We, therefore, entertain no doubt that all the five persons who came to the shop of the informant had a common intention to commit the murder of Shankar Rastogi and they acted pursuant to a pre-arranged plan. The facts clearly are consistent only with the hypothesis of their acting in furtherance of a common intention. They have, therefore, rightly been convicted with the aid of Section 34, I.P.C.'

In the instant case as narrated above, appellant Hari Ram not only prevented the prosecution witnesses Ajudhia (P.W.1) and Mangali (P.W.2) from coming to rescue of Kundan Lal deceased and raising alarm but also acted in a pre-planned manner by going with the appellant Parmanand in the company of Kundan Lal deceased by concealing a country made pistol in his waist. The facts and circumstances of the case coupled with relationship of Hari Ram with Parmanand, the main assailant and having equal motive clearly indicated, that appellant Hari Ram had also pre-planned the murder of the deceased with Parmanand and in pursuance of above plan went to the spot with the deceased and main assailant keeping country made pistol in a concealed manner and on the spot stopped the deceased and prevented the witnesses from coming to the rescue of the deceased and thus, facilitated the murder of the deceased. Thus, there is overwhelming evidence on record to prove that the appellant Hari Ram had also shared common intention and was rightly convicted with the aid of Section 34, I.P.C.

32. In view of our above discussions, we find no force in the appeal. The appeal is dismissed. The conviction and sentence of the appellant Hari Ram awarded by the

Trial Court are confirmed.

33. The appellant Hari Ram is on bail. He shall surrender before the C. J. M. concerned to serve out their sentences. The C. J. M. concerned is directed to issue non-bailable warrants against the appellant to secure their arrest to send him to jail.

34. Office is directed to send a copy of the order to C. J. M. concerned for compliance and report within a month.

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