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Naraln and ors. Vs. the State

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Court : Allahabad

Decided On : Jan-22-1998

Reported in : 1998CriLJ4158

Judge : S.K. Phaujdar and ; N.S. Gupta, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; Uttar Pradesh Children Act, 1952; Indian Penal Code (IPC), 1860 - Sections 34, 302 and 307

Appeal No. : Criminal Appeal No. 731 of 1981

Appellant : Naraln and ors.

Respondent : The State

Advocate for Def. : K.C. Saxena, A.G.A.

Advocate for Pet/Ap. : S.A.N. Shah, Adv.

Disposition : Appeal dismissed

Judgement :

N.S. Gupta, J.

1. Accused appellant-- Narain, Lakman and Mohan who were real brothers, were convicted by Sri Sachidanand, the then Sessions Judge, Farrukhabad in S.T. No. 384 of 1980 under Section 302 read with Section 34, I.P.C. and further under

Section 307 read with Section 34, I.P.C. and were sentenced to undergo imprisonment for life under the first count and 5 years R.I. under second count; both the sentences were to run concurrently, as per his judgment and order dated 24-2-1981, have come up in appeal before this Court.

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

The complainant Ram Singh P.W. 2 and the accused appellants were all resident of village Salempur, P.S. Man Darwaza, District Farrukhabad Kali Charari deceased was son of injured Pultu Lal PW 1 was a Kishan by caste. The accused appellants, as also their brother Arjun (accused since absconding also during trial) were Jatav by caste, on 14th Sept. 1979, at about 5.30 PW the injured Puttu Lal PW 1 along with his son Kali Charan deceased and Ram Singh PW 2 along with others, namely Premruj, Bishambhar Sohan and Ram Prasad were returning from cattle fare to their village. When they reached in village Pooran Nagla, the accused appellant Narain, Lalman Mohan and Arjun appeared there all of a sudden from she nearby Bajra field. They were all armed with country made pistols. They surrounded the complainant. his father and brother deceased Kali Charan. The complainant and his father tried to run away. Kali Charan deceased was caught hold by accused Arjun. He too got himself released from Arjun and tried to tun away. The accused appellants as also their brother Arjun open fire by means of their country made pistols causing injuries to Kali Charan and his father Puttu Lal PW 1 and ran away. Kali Charari succumbed to his injuries at Fatehgarh hospital.

An F.I.R. Ex. Ka-8 about this occurrence was lodged by Ram Singh PW 2 at P. S. Man Darwaza on 14th Sept. 1979 at about 8.25 p.m. which lay at a distance of about 6 miles from the place of occurrence. S.I. Moti Singh PW 3 immediately took up the investigation of the case in his hands. He recorded the statement of Ram Singh as also Puttu Lai, injured and referred Puttu Lal for his medical examination to Civil Hospital, Farrukhabad. Since the doctor was not available at Civil Hospital Farrukhabad, Puttu Lal was referred for medical examination to Fategharh hospital, where he was medically examined at about 11.25 p.m. on 14-9-1979 by Emergency Doctor, who found the following injuries.

1. Multiple gun shot wound of entrance in an area of 10' x 4' on left arm and left elbow on lateral side. Each of si/e 1/6' x 1/6' x muscle, circular in sharp inverted and lacerated margins.

2. Multiple gun short wound of entrance in area of 51/' x 3 1/2' on left side chest. Each of size of 1/6 x 1/6' depth could not be ascertained as probing not done, circular in shape, invested and lacerated margins.

3. Lacerated wound 1/4' x 1/4' x muscle on upper lip.

In the opinion of the doctor, there was no blackening, tattooing or charring. No wound of exit was present. He advised X-ray with regard to injury No. 1 and 2 for ascertaining bullets. The injury No. 3 was caused by blunt weapon.

3. S.I. Moti Singh visited the District Hospital right in the night with a view to record the statement of Kali Charan hot he was not in a position to give any statement. He inspected the scene of occurrence and prepared site plan Ex. Ka 10. He recovered certain cartridges of 12 bore and four Sicklies from the place of occurrence and prepared recovery memo Ex. Ka-11 about the same. He also recovered blood stained earth and simple earth and prepared recovery memo Fix. Ka-12 about the same. He tried to apprehend the accused, persons, but they were not available. The subsequent investigation into the matter was conducted by S.I. Ram Dutt Srivastava, who after needful investigation into the matter, submitted a charge sheet against the accused appellants as also Arjun showing him as an absconder.

4. Kali Charan deceased was medically examined at District Hospital Farrukhabad by Dr. H.C. Gupta on 14-9- 979 at about 7.45 p.m. He found the position as under :

G.C. V.V. Poor gasping condition unconscious, pulse 130 p.m., feeble irregular.

B.P. 60/92

CVE - Under Section Feeble irregular.

Resp - Shallow and jurkey

puples - Rt. and left dialated

Injuries - postponded (due to poor and gasping condition of patient) till condition recovers.

The autopsy on the dead body of the deceased was conducted on 15-9-1979 at about 4 p.m. by medical officer of District Hospital, Fatehgarh, who found the condition of the deceased as under:

The deceased was aged about 40 years. He died half day back. His body was average built. Rigor mortis was present in upper and lower limbs. Mouth closed, eyes closed and blood was coming out from nostrils.

The doctor found the following ante-mortem injuries :

1. Gun shot wound of entry 1/8' x 1/8' x muscle deep on the left side of the neck 4' below the left ear. Margins were inverted, blackening present.

2. Gun shot wound of entry 1/4' x 1/4' mouth cavity deep, 1' just below the left ear. Margins were inverted. 3' above the injury No. 1.

Blackening present.

3. Gun shot wound of entry 1/8' x 1/8' x mouth cavity deep on the middle part of the cheek. Margins were inverted. Blackening present.

4. Superfical gun shot wound 1/4' x 1/4' x scalp deep, 1/2' just below the injury No. 3.

5. Lateral to left angle of mouth. Margins were inverted. Blackening present. In the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of ante-mortem injuries.

5. After needful committal, the case came up for trial before Sri Sachidanand, the then Sessions Judge, Farrukhabad, who framed charges under Sections 302/34 and 307/34, I.P.C. against the accused appellants. The accused appellants pleaded 'not guilty' and claimed trial. They pleaded that the complainant and his

father Puttu Lal bore enmity with them on account of election of Gram Pradhan and maintained that they have been falsely implicated in this case. The accused appellant Lalman further pleaded that he was not present at the scene of occurrence and was present at Fatehgarh in connection with the hearing of the case. The accused appellant did not adduce any evidence in defence. After needful trial into the matter, the accused appellants were convicted and sentenced as aforesaid; hence this appeal.

6. We have heard Sri S. A. N. Shah, learned counsel for the appellants and Sri K. C. Saxena, AGA for the State, considered their contentions and gone through the facts and circumstances of the case.

7. The prosecution in support of its case had examined four witnesses. Out of whom PuttuLal PW 1 is the injured eye witness of the occurrence. He is the father of the deceased who had unfolded the prosecution story as narrated by PW 2 Ram Singh, brother of the deceased who has fully supported by the prosecution version on the point that the deceased Kali Charan was done to death by means of fires made by the accused appellants and their brother Arjun and (hat his father Puttu Lai, PW I sustained gun shot injuries at the hands of the accused appellants.

8. PW 3 S.I. Mod Singh is the I.O. of the case and PW 4, S.I. Ram Dutt is another Sub Inspector of police who submitted charge sheet against the accused appellants after recording the statement of the accused appellants when they surrendered before the Judicial Magistrate.

9. The fact that Kali Charan was done to death by means of gun sho! injuries and that Puttu Lal PW 1, the father of Kali Charan had sustained a number of gun shot injuries stands fully proved by the medical evidence on record viz. injury report Exh. Kha 1 and Post-mortem report Exh. Kha 2, the genuineness of which was very much admitted by the accused appellants before the trial Court. Exh. Kha 3 is medical examination report of Kali Charan who was done to death. He was examined at 7.45 p.m. on 14-9-1979 at district hospital Fatehgarh, the genuiness of this report too was never disputed by the accused appellants before the trial Court. On perusal of these medical examination report and post mortem report, it is clear that Puttu Lai, PW 1 had sustained a number of gun shot wound of entry

as also lacerated wound and that the deceased Kali Charan too had sustained a number of gun shot injuries because of which he ultimately died on the intervening night of 14/15-9-1979. Thus the factum of the death of Kali Charan by means of injuries inflicted upon him by means of weapons like country made pitols and that Puttu Lal, PW 1 too sustained a number of injuries by means of similar weapons stands fully proved by the medical evidence on record.

10. Now the only question which arises for our determination is to sec as to whether the injuries found on the person of Puttu Lal PW 1 and Kali Charan deceased were caused by the accused appellants or by some strangers who tried to rob Puttu Lal PW I and his son as was suggested by the learned counsel for the defence.

11. Puttu Lal PW 1 is the injured eye witness of the occurrence and is the unfortunate father of the deceased Kali Charan, who was done to death. He stated in his statement on oath before the Court below that the accused appellant Lalman, Narain, Mohan and Arjun (accused since absconding) and one Sarju were all sons of Banwari Jalav and were residents of his village. He stated that Sarju was killed in connection with a theft which had taken place at the house of Smt. Menka Devi. Arjun, the brother of the accused appellants and the accused since absonding was prosecuted in connection with the said theft case. He after being released on bail was absconding. He stated that his son Kali Charan deceased was a prosecution witness in connection with the said theft case which was committed at the house of Smt. Mainaka. While giving the version of the occurrence, he stated that on the date of the occurrence at about 5.30 p.m. he along with his son Ram Singh PW 2, deceased Kali Charan and other villagers of his village, namley, Premraj, Ram Prasad, Sohan and Bishambhar were returning to their village from a cattle fair fo Faizbag and when they came near the village Pooran Nagla about a distance of 1 1/2 furlongs towards Mohammad Pur, the accused appellants along with their brother Arjun emerged out from a nearby Bajra field. They were all armed with country made pistols. They surrounded the deceased and then the deceased tried to run, Arjun caught hold to him. Kali Charan got himself released and tried to run towards him, Arjun and his brothers viz. accused appellants opened fireby means of their respective country made

pistols, causing injuries to Kali Charan and himself. Kali Charan had fallen down after 4-6 paces. Few other persons also came on the spot. Arjun and the accused appellants ran away towards west. He stated that after running away of the accused appellants, he and his son Ram Singh PW 2 went near Kali Charan but he was unable to speak. He was, therefore, sent to Falehgarh Hospital along it one Kamta Prasad and others for treatment. He stated that he along with his son Ram Singh went to police station Mau Darwaza where Ram Singh lodged a written report about the occurrence of this case During the course of his cross-examination before the court below this witness stated that the cattle fair of Faizbag was situate at a distance of about 7 miles from the place of occurrence. He stated that he could not purchase any cattle in the cattle.fair although he was having a sum of Rs. 2000-2500 with him. He stated that the cattle fair is held from 8 O'clock in the morning and from 10-11 O'clock the sale starts. He stated that he reached the cattte fair at about 9.30 a.m. and saw a number of bullocks till 2 p.m. but he could not purchase any. He stated that he had gone to caltle fair by Motor Bus but while returning, he came on foot because a number of other persons had joined him while going on foot. He stated that Kali Charan was removed to the hospital on a Charpai which was brought on the spot from the villagers of Pooran Nagla, by Baburam, Dharma Pal, Genda Lai, Rameshwar, Durga Vijai, Kamta and Rajpal. He stated that he did not accompany Kali Charan on Charpai because he too had sustained injuries. Subsequently the bullock-cart was brought; then he along with his son Ram Singh PW 2 went to the police station Mau Darwaza. He stated that the road on which he and his sons were going at the time of occurrence was about 1 yard wide. There were Bajra field on one side on that way and on the other side, there was straw. He stated that at the time of the occurrence, he heard the noise of four fires. When the fires were made, he and the deceased Kali Charan were running towards Mohammadpur. The accused appellants and their brother Arjun were following them at a distance of 2-4 paces from towards left side from the fields of Bajra. He stated that Kali Charan was wounded by means of first fire. When Kali Charan had fallen down, he was fired upon. He stated that Ram Singh had lodged a written report at PS. Mau Darwaza.

12. As stated above, PW 2 Ram Singh is the son of Puttu Lal PW 1 and is brother of deceased Kali Charan. He has fully supported the statement of his father Puttu

Lal in material particulars.

13. The fact that Puttu Lal PW 1 had sustained a number of gun shot wounds in the occurrence intjuestion proves his presence on the spot beyond any shadow of doubt. It is a normal feature of the villages that when a villager goes to make purchases of any cattle etc. he takes his sons and relations along with him. Therefore, there is nothing unnatural or improbable in the prosecution story as set up by Puttu Lal on the point that on the fateful date of the occurrence, he had gone to purchase cattle in the cattle fair and while returning from there, the incident of this case had happened. The mere fact that a number of villagers namely, Premraj, Ram Prasad, Sohan and Bishambar etc. who were coming with him and were present at the time of the occurrence were not examined by the prosecution does not discredit the solemn testimony of Puttu Lal an injured eye witness of the occurrence as also his son Ram Singh PW 2.

14. It was suggested on behalf of the accused appellant that Ram Singh PW 2 was working as a teacher in a school and that according to his own statement he had gone to school on the date of the occurrence also. Ram Singh PW 2 stated in his cross-examination before the Court below that at the time of the occurrence the timings of his school hours were noon hours only and that he had taken an hour leave when his father Puttu Lal and brother Kali Charan deceased had come there and that along with them he had gone to cattle fair. It is important to note here that this witness had accompanied his father Puttu Lal also to police station, which lay at a distance of about six miles from the place of occurrence and had lodged a written report there at about 8.25 p.m.

15. The circumstance that Kali Charan was sent to the Hospital on a Charpai right from the place of occurrence and was medically examined at 7.45 p.m. on 14-9-1979 at District Hospital Fatehgarh but his detailed medical examination could not be carried out since his general condition was very very poor. He was gasping and unconscious. It fully goes to show that Ihe occurrence of this case had taken place at about 5.30p.m. on 14-9-1979 in village Pooran Nagla which was situate at a distance of six miles from P.S. Mau Darwaza.

16. The circumstances that one of the brothers of accused appellants, namely, Suraj was earlier killed in connection with the theft which was committed at the house of Smt. Mainaka Devi and that their another brother Arjun was prosecuted in connection with the said theft case and further that the deceased Kali Charan was a prosecution witness in the said theft case afforded well founded motive to the accused appellants and his brother Arjun to take the revenge of the death of their brother Suraj and the involvement of another brother Arjun who has since been absconding by taking the law into their own hands in the manner stated by Puttu Lal PW 1 and Ram Singh PW 2.

17. It was vehemently argued by Sri S. A. N. Shah learned counsel for the appellants that all the injuries found on the person of Puttu Lal PW 1 and the deceased Kali Gharan were on front side. It was further argued on behalf of the appellants that if it was a fact that the accused appellants had opened fire upon Puttu Lal and his son Kali Charan while they were running away, all the injuries should have been caused on the back side of Puttu Lal and the deceased Kali Charan. We are unable to agree. It was elicited by the learned counsel for the defence during the course of cross-examination of Puttu Lal PW 1 in paragraph No. 17 that when he and his son Kali Charan were running towards Mohammadpur for saving themselves from the clutches of the accused appellants, the accused appellants and their brother Arjun were following them at a distance of about 2-4 paces towards left in a Bajra field. The circumstance that the injuries found on the person of Puttu Lal were on left arm and left side chest and further that the injuries of Kali Charan were on left side, neck and mouth and scalp lends assurance to the statement of Puttu Lal PW 1 on the point that the assailants had fired upon him and his son deceased Kali Charan from towards left side while they were running away and while the accused appellants and his brother Arjun was chasing them and had opened fire. Thus the ocular evidence of Puttu Lal PW 1 and Ram Singh PW 2 finds full corroboration by the medical evidence on record and we find nothing wrong on the part of the learned Sessions Judge in believing and convicting the accused appellants on the basis of the said evidence.

18. Sri Shah; learned counsel for the accused appellants on the basis of the statement of accused appellant Mohan argued that Mohan has stated his age as

16 years at the time of his examination under Section 313, Cr.P.C. which was recorded on 17-2-1981, It was further argued that the occurrence of'this case had taken place on 14-9-1979 and at that time the accused appellant Mohan must have been aged about 14 years or so. It was, therefore, urged before us that the accused appellant Mohan deserves the benefit of Children Act and is not liable to imprisonment. We are unable to accede to the submission made by the learned counsel for the accused appellant for the obvious reason that the accused appellant never took this plea that he was a Child at the time of the occurrence either before the committal Court or before the trial Court. It was laid down by the Apex Court in State of Haryana v. Balwant Singh reported in 1993 SCC (Cri) page 251 that when no plea was raised on behalf of the accused that he was a child before the committal Magistrate or the trial Court, it cannot be believed simply on the basis of his examination under Section 313, Cr.P.C. that he was a child on the date of the occurrence of the case. That being so, the accused having not taken any such plea before the Court below, it is not possible for us to appreciate the argument built up by the learned counsel for the appellant and to give any benefit of the Children Act to the accused appellant Mohan.

19. The circumstance that the investigating officer S.I. Moti Singh PW 3 found certain cartridges and ticklies on the spot at the time of his spot visit fully proves that the occurrence of this case had taken plea at the time and place mentioned by Puttu Lal PW 1, that is, in village Pooran Nagla on 14-9-1979 at 5.30 p.m.

20. Under the circumstance, we find no error in the finding of fact recorded by the Court below regarding guilt of the accused appellants punishable under Section 302/307/34,1.P.C. Thus the finding of fact recorded, by the Court below on this score is accordingly affirmed.

21. Coming on the point of sentence, we find that a young man of 40 years of age was done to death and that the old man aged about 65 years who was the father of the deceased was attempted to murder by means of fires made upon him, thus the imprisonment for life inflicted by the Court below under Section 302/34,1.P.C. and 5 years R.I. under Section 307/34,1.P.C. appears to be quite appropriate. It warrants no interference by this Court. Thus the conviction and sentence of the

accused appellants are accordingly sustained. The appeal has got no force. It is hereby dismissed. It is directed that the bail granted to the accused appellants is hereby cancelled. Let the accused appellants surrender before the Court below within a period of 15 days from the date of this order, failing which the Court below shall taken all sort of coercive measures to procure attendance of the accused appellants and to commit them to prison for serving out their sentences according to law.

22. Let the record of the case be sent to the court below along with the copy of this judgment for needful compliance. The Court below is directed to report compliance within three months.

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