

Ram Awadh Vs. State of U.P.

Ram Awadh Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/489691

Court : Allahabad

Decided On : Mar-04-1998

Reported in : 1999CriLJ4083

Judge : G.P. Mathur and ;K.D. Shahi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 304 and 313; [Constitution of India](#) - Articles 21, 22(1) and 39A

Appeal No. : Cri. Appeal No. 1136 of 1991

Appellant : Ram Awadh

Respondent : State of U.P.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Govinda Saran, Adv.

Disposition : Appeal allowed

Judgement :

G.P. Mathur, J.

1. Ram Awadh has preferred this appeal against the judgment and order dated 22-4-1991 of the learned Sessions Judge, Basti in S.T. NO. 105 of 1990 by which he

has been convicted under Section 302, IPC and has been sentenced to imprisonment for life.

2. The case of the prosecution, in brief, is that the appellant Ram Awadh is resident of village Banjaria within Police Station Khalilabad in the district of Basti. At about 12 a.m. on 5-6-1990 the appellant assaulted his wife Smt. Budhna with a gandase. She raised alarm on which the complainant Rasiyawan who happens to be a collateral of the appellant, Chattarpal, Sriram and several others rushed to the spot. However, before these people could reach the spot, the appellant had succeeded in giving several blows to his wife who fell down dead. The appellant was apprehended on spot by the village people. Gandasa was also taken into custody. Thereafter Rasiyawan lodged a written report of the occurrence at 3.50 p.m. on 5-6-1990 at 8 km. distant P.S. Khalilabad.

3. The report was lodged in presence of PW 6 Paras Nath Pandey, S.I. of P.S. Khalilabad. He proceeded to the spot after recording the statement of Rasiyawan. After reaching village Banjaria, he found a crowd near the body of Smt. Budhna and the appellant was found tied to a pillar. The blood stained gandasa was also found near the body which was taken into possession and recovery memo was prepared. The Investigating Officer collected plain and blood stained earth from the spot, held inquest on the body of Smt. Budhna and after preparing other papers and sealing the body, was sent for post mortem examination. The accused was brought to the police station and was kept in lock up. He also prepared a site plain which is Ext. Ka 7. After completing investigation charge sheet Ex. Ka 11 was submitted in Court.

4. After commitment of the case, the learned Sessions Judge framed charge under Section 302, IPC, against the appellant who pleaded not guilty and claimed to be tried. The prosecution, in support of its case, examined six witnesses including two eye witnesses and filed some documentary evidence. The learned Sessions Judge believed the prosecution case and convicted and sentenced the appellant as mentioned above.

5. PW 1 Rasiyawan is the first informant and an eye witness. He stated that he is a collateral of appellant Ram Awadh and his house is ten katthas away from his own

house. At about 12 am. on the date of occurrence, he rushed towards the house of the appellant after hearing the alarm raised by his wife. He saw that the appellant had floored his wife and was assaulting her with a gandasa. Chattarpal and Sriram had arrived on the scene and they caught hold of the appellant and tied him with a pillar and the gandasa was also kept there. He dictated a report to Sheo Das Pradesh, who arrived shortly afterwards and then he went to the police station on a jeep. In his cross-examination, he stated that both he and the appellant were 'chamar' by caste. He had seen blood on the face, leg and lungi of the appellant. He admitted that he had not given any such statement that there was blood on the lungi of the appellant to the Investigating Officer. He denied the defence suggestion that there was no blood on the body and clothes of the appellant or that he had not shown blood to the Investigating Officer.

6. PW 2 Chattarpal has stated that he rushed to the house of Ram Awadh after hearing the alarm of his wife at about 12 a.m. on 5-6-1990 where he saw that the appellant had floored his wife and was assaulting her with a gandasa. He and other persons who had arrived on the scene caught hold of the appellant along with the gandasa and tied him. Lot of blood had fallen on the spot. The Investigating Officer took the appellant and the gandasa in his custody. In his cross-examination, he has stated that he was 'chamar' by caste. He had seen blood on the hand, body and lungi of the appellant. His statement under Section 161, Cr.P.C. was recorded on the same day where he had stated that there was blood on the lungi of the appellant but he did not know why the said fact was not written there. He denied the defence suggestion that he was giving a false statement.

7. PW 5 Dr. A.K. Jain of the District Hospital, Basti held autopsy on the body of the deceased Smt. Budhna at 3.30 p.m. on 6-6-1990 and found the following ante mortem injuries thereon:

1. Incised wound 14 cm. x 3 cm. x bone deep over front of neck, 7 cm. below under injury. Trachea and oesophagus cut through and through.
2. Incised wound 1 cm. x 0.5 cm. x muscle deep over back of neck, forward right side 5 cm. above C 7 spine. Transverse.

3. Incised wound 2.0 cm. x 0.2 cm. x skin deep over back of neck, 5 cm. above c 7 spine forward left side. Transverse.
4. Incised wound 2.0 cm. x 0.2 cm. x skin deep over back of neck, 3 cm above C 7 spine in mid line.
5. Incised wound 1.0 cm. x 0.5 cm. x muscle deep over back of top of left shoulder.

The internal examination showed that trachea was cut through and through and first and second tracheal rings were broken. The great vessels of neck were cut and oesophagus was cut through and through. In the opinion of the doctor, the death had occurred due to shock and haemorrhage as a result of ante mortem injuries. The doctor has further stated that the injuries could have been caused by a Gandasa at about 12 a.m. on 5-6-1990.

8. PW Sheo Das Tewari is the Pardhan of the village. He has stated that he has scribed the report on the dictation of the PW 1 Rasiyavan and thereafter it was read over to him who put his signature thereon. He has proved the report Ex. Ka-1 and also inquest report which bears his signature. PW 4 Sitla Prasad Dubey was the Head Constable at PS. Khalilabad on 5-6-1990. He has stated that he had prepared the chick report Ex. Ka 2 on the basis of the F.I..R. lodged by Rasiyavan and made entry in the general diary at 3.50 p.m. regarding registration of the case. He has further stated that at 10.05 p.m. ASI of the PS. Khalilabad brought the accused and the recovered articles to the police station. The ASI had brought gandasa, plain and blood stained earth to the police station. PW 6 P.N. Pandey was ASI at PS. Khalilabad on 5-6-1990. The case was registered in his presence and he had recorded statement of Rasiyavan forthwith at the police station. He proceeded to the spot thereafter. He has stated that after reaching the village Banjara, he saw a big crowd near the dead body and the villagers had tied Ram Awadh with a pillar. The blood stained gandasa was lying near the appellant which was handed over to him by the first informant. He found blood in the spot and collected plain and blood stained earth from there and prepared its recovery memo and also held inquest on the body of the deceased.

9. The appellant in his statement under Section 313, Cr.P.C. admitted that Smt. Budhna was his wife and he was unhappy with her. He denied the rest of the prosecution case. In reply to question No. 10 he stated that he did not know why witnesses were deposing against him. As already stated, the accused led no evidence in his defence.

10. The evidence adduced by the prosecution shows that the appellant killed his wife by giving her gandasas at about 12 in the afternoon just in front of his house which is situated in the village. When questioned under Section 313, Cr.P.C. the appellant could not give his age but the learned Sessions Judge has noted that the appellant appeared to be about 55 years of age. The post mortem report shows that the age of the deceased Smt. Budhna was about 35 years. It is mentioned in the F.I.R. that the appellant has small children. The motive for commission of the crime is not disclosed in the F.I.R. nor the prosecution witnesses have stated anything about the same. Why the appellant suddenly decided to kill his wife is shrouded in mystery. A gadasa is a heavy cutting weapon and the post mortem report shows that four blows were given on the neck region. One injury was such which cut trachea and oesophagus through and through. If the appellant is the same person, there must be some strong reasons which led him to commit the crime at 12 in the afternoon right in front of his house when the same was bound to be witnessed by many people of the village. He does not seem to have given any thought as to what will happen to his children after his wife is dead and he is behind the bars which he was bound to be in the circumstances of the case. It is likely that the appellant was in such a mental state that he was not realising the consequences of his act or he lost his mental balance or appears to have lost his self-control on account of some sudden and grave provocation. At any rate the act committed by the appellant does not appear to be one of a normal human being unless he had been provoked to such an extent that he was deprived of his power of self-control. However, it will not be proper for us to speculate on this point as the evidence on record is conspicuously silent on these matters.

11. The cross-examination of the prosecution witnesses is extremely perfunctory. The only questions put to two eye witnesses are regarding the presence of blood

stains on the body and clothes of the appellant and whether the said fact was disclosed by them in their statements under Section 161, Cr.P.C. No other question was put to these witnesses and their cross-examination runs into barely five lines. PW 3 Sheo Das Tewari who is a Pradhan of the village and scribe of the F.I.R. and PW 4 Shitla Prasad Dubey Head Constable were not at all cross-examined. The only question put to PW 5 Dr. A.K. Jain was whether his statement under Section 161, Cr.P.C. was recorded. Similarly the only question put to the Investigating Officer (PW 6 Paras Nath Pandey) was whether PW 1 and PW 2 had made any statement under Section 161, Cr.P.C. regarding the presence of blood on the body and clothes of the appellant.

12. The record shows that the appellant had not engaged any counsel for his defence. The learned Sessions Judge appointed Sri Chandra Mohan Advocate as amicus curiae on 24-8-1990 to defend the appellant and fixed 12-9-1990 for recording evidence. On the said date, the case was adjourned to 13-9-1990 and thereafter it was adjourned to 1-10-1990 when the statement of PW 1 and PW 2 were recorded. The statement of PW 3 was recorded on 4-10-1990 and the case was adjourned to 16-10-1990. Finally the statement of PW 4 was recorded on 16-11-1990 of PW 5 on 29-11-1990 and that of PW 6 on 3-4-1991 In spite of sufficient opportunity, the counsel for the appellant made no effort to cross-examine the prosecution witnesses on any material point which as defence lawyer is expected and supposed to do in a murder case.

13. Article 22(1) of the [Constitution of India](#) guarantees a fundamental right that no persons shall be denied the right to consult and to be defended by, a legal practitioner of his choice. Article 39-A which is in part IV of the Constitution dealing with directive principles of State policy lays down that the State shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Section 304, Cr.P.C. provided that where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State. These provisions show that not only the accused has a fundamental

right to be defended by a counsel of his choice but it is also an obligation of the State to appoint a counsel for the defence of an accused who does not have sufficient means to engage a counsel for himself.

14. The requirement of providing counsel to an accused at the State expense is not an empty formality which may be not by merely appointing a counsel whatever his calibre may be. When the law enjoins appointing a counsel to defend an accused, it means an effective counsel, a counsel in real sense who can safeguard the interest of the accused in best possible manner which is permissible under law. An accused facing charge of murder may be sentenced to death or imprisonment for life and consequently his case should be handled by a competent person and not by a novice or one who has no professional expertise. A duty is cast upon the Judges before whom such indigent accused are facing trial for serious offence and who are not able to engage a counsel, to appoint competent persons for their defence. It is needless to emphasis that a Judge is not a prosecutor and his duty is to discern the truth so that he is able to arrive at a correct conclusion. A defence lawyer plays an important role in bringing out the truth before the Court by cross-examining the witnesses and placing relevant materials or evidence. The absence of proper cross-examination may at times result in miscarriage of justice and the Court has to guard against such an eventuality.

15. Need to appoint competent persons to defend an accused who has not been able to engage a counsel, has been emphasised in several decisions of Supreme Court. In *Ranchod M. Wasawa v. State of Gujarat* : 1974 CriLJ799 it was observed as follows (Para 1 of AIR):.Even so, we are disturbed, having a look at the proceedings in this case, that the Sessions Judge do not view with sufficient seriousness the need to appoint State Counsel for undefended accused in grave cases. Indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates, equal to handling the complex cases, not patronising gestures to raw entrants to the Bar. Sufficient time and compete papers should also be made available, so that the advocate chosen may serve the cause of justice with all the ability at his command ...

In *M.S. Hoskot v. State of Maharashtra* : 1978 CriLJ1678 , was held as follows at page 1557 (of AIR):.Where the prisoner is disabled from engaging lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence and the ends of justice so require, assign competent counsel for the prisoner's defence provided the party does not object to that lawyer.

The above principle was reiterated in *Hussainara Khatoon v. Home Secretary State of Bihar* : 1979 CriLJ1045 *Khatri v. State of Bihar* : 1981 CriLJ597 and *Sukh Das v. Union Territory* : 1986 CriLJ1084 .

16-17. The principle that a competent lawyer should be engaged at the State expense to defend such accused who are unable to engage lawyer on account of their poverty was recognised in our country even before the advent of the Constitution or Code of Criminal Procedure 1973 had come into force. In *Darpan Potrain v. Emperor*, 1938 (39) Cri LJ 384 and then in *Dikson Mali v. Emperor* AIR 1942 Patna 90 : 1942) 43 Cri LJ 36, the Court gave a rule of caution in the following words at page 93 (of AIR):.We desire to make some remarks about the defence of prisoners who are too poor to instruct lawyers on their own account. To see whose duty it is to select lawyers to defend at the expenses of the Crown should not treat the selection as a matter of patronage for the benefit of the lawyer so appointed. The selection should be made from among young men of marked ability. We have frequently observed that the persons actually appointed, do their work very badly and conspicuous opportunities for cross examination and obvious arguments are entirely ignored ...

In the case in hand, there cannot be even a slightest doubt that the lawyer who was appointed *amicus curiae* to defend the appellant did not at all discharge the duty which was cast upon him. It can hardly be said that the appellant was defended by a lawyer. In *Second Hussainara case* : 1979 CriLJ1052 it was observed that if free legal services are not provided to an accused who is unable to engage a lawyer on account of his poverty, the trial itself may run the risk of being vitiated as contravening Article 21 and every State Government should try to avoid such possibility eventually. Since we are of the opinion that the appellant did

not get a fair trial as the lawyer appointed to defend him was only in name sake and he did not do his duty at all, the trial of the appellant has been vitiated. The appellant has, therefore, to be tried again in accordance with law.

18. In the result, the appeal is allowed and the conviction of the appellant and the sentence imposed upon him by the judgment and order dated 22-4-1991 are set aside. The appellant shall be tried again in accordance with law. The learned Sessions Judge is directed to appoint a competent lawyer at State expense to defend the appellant in the trial.

19. Office is directed to send back the entire record of the case to the learned Sessions Judge, Basti. It will be open for the learned Sessions Judge to assign the case to some other Addl. Sessions Judge in his Sessions Division.

20. Before parting with the case, we would like to observe that the learned Sessions Judges should take great care in appointing only competent lawyers as amicus curiae. No one should be appointed merely to provide him with some monetary benefit. It is true that senior and busy lawyers are not willing to act as amicus curiae on account of poor remuneration. Nevertheless an effort should be made to appoint capable persons; This should not be considered as grant of charity to those who on account of their incompetence have not been able to make any mark in the profession.