

Achchey Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-16-1999

Reported in : 1999CriLJ3713

Judge : G.P. Mathur and ;B.K. Rathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 307 and 364; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Crl. Appeal No. 2504 of 1980

Appellant : Achchey Lal

Respondent : State of U.P.

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : P.N. Misra, Adv.

Disposition : Appeal dismissed

Judgement :

B.K. Rathi, J.

1. Aggrieved by his conviction for the offences under Section 302 read with Section 149, 1.P.C., Section 307 read with Section 149,1.P.C., Section 364,1.P.C. and Section 148,1.P.C. and sentences of Imprisonment for Life, seven years'

Rigorous Imprisonment, seven years Rigorous Imprisonment and two years Rigorous Imprisonment respectively for each offence vide judgment dated 3-11-80. This appeal has been preferred by appellant Achchey Lal.

2. The case of the prosecution as unfolded from the evidence on the record is as follows :--

3. Appellant Achchey Lal is a resident of village Bara Har, P. S. Bewar of District Mainpuri. A loan of Rs. 7,000/- was advanced to him by Brij Raj Singh deceased of this case, who was an employee of the Military department and was getting Rs. 500/- per month as salary. The other victim Jawahar Singh is the nephew of Brij Raj Singh. That money was demanded by Brij Raj Singh from the appellant. The appellant promise to return the same, but did not return. A day before this fateful day on 20-6-79 Brij Raj Singh victim met Achchey Lal in Bewar Bazar and demanded his amount. At that time the other victim Jawahar Singh and witnesses Rajendra Singh and Jagvir Singh P.Ws. 1 and 2 were also with Brij Raj Singh. On his demand the appellant asked Brij Raj Singh and the other persons accompanying him to come to his Tube-well the next day to take dinner with him saying that his loan will also be repaid. Accordingly on the date of incident i.e. on 20-6-79 both the victims of this case Brij Raj Singh and Jawahar Singh along with Rajendra Singh and Jagvir Singh P.Ws. 1 and 2 started from their village to the Tube-well of appellant Achchey Lal. On the way Jagvir Singh P. W. 2 made certain purchases from Bewar Bazar and after making purchases, they met Munshi Lal alias Munshi Singh P. W. 3 in village Bahta, which was in the way, where Jagvir Singh had some talks with Munshi Lal alias Munshi Singh regarding return of Rs. 50/- from an Advocate. Munshi Lal offered to take dinner with him. However, they informed Munshi Lal that they are going to take dinner-at the Tube-well of Achchey Lal.

4. All the four persons, named above, reached at the Tube-well of Achchey Lal at about 8.00 p.m. There was light of electric bulb, which was lighting at his Tubewell. Achchey Lal was at his Tube-well and he along with 2 or 3 other persons were sitting on a cot. Besides them 8 to 10 persons were sitting below the Chhappar at his Tube-well. As Brij Raj Singh and others reached there, Achchey Lal offered

them a cot and thereafter the appellant asked the persons already sitting under his Chhappar that the invitees to whom they are waiting had arrived. Immediately thereafter the persons sitting under the Chhappar, came out and tied all the four persons and drove them towards north. The son of appellant Achchey Lal locked the room of the Tube-well and went towards the village. The appellant was also accompanying them with a gun.

5. After some distance the victims were diverted towards east and were taken towards village Sakat Bewar and then they were driven to the Jungle of village Daher. It was about 9.00 or 9.30 p.m. by that time. Leaving the victims there, two persons went to village Daher and returned after about half an hour with one more person, who was guiding them regarding the way. Thereafter the victims were made to cross Kali Nadi near village Chhabilepur. After covering a distance of about 50 or 60 steps after crossing the river, Brij Raj Singh, his nephew Jawahar Singh, Rajendra Singh and Jagvir Singh P.Ws. 1 and 2 were made to stand in a line. Some of the miscreants were lighting torches. Four of them including the appellant fired towards them. On receiving injuries all the four persons fell down. However, somehow Jagvir Singh P.W. 2 managed to escape. He was chased, but could not be caught by the miscreants. Rajendra Singh P.W. 1 received serious injuries, but he was able to escape and ran from the place of the incident and fell down in a field within the circle of P. S. Bewar. He remained lying there up to 3.30 a.m. or 4.00 a.m. when he heard some alarm and thereafter he went to village Nagla Swami. Jagvir Singh P.W. 2 met him there and both of them went to village Madanpur where P.A.C. was carrying. With the help of P. A. C. personnel both of them reached to police station Mohammadabad, where the F.I.R. Ex. Ka-1 of this incident was written at the dictation of Jagvir Singh P.W. 2 by constable Mahendra Pal Singh P.W. 12 on 21-6-79 at 7.45 a.m. He immediately registered a case in the General Diary Ex. Ka-19. The incident took place within the circle of police station Bewar and therefore, he immediately sent the chik report and the G. D. to P. S. Bewar by constable Permeshwar Dayal Saxena P. W. 9.

6. Mohd. Naeem Khan S. I. P.W. 10 was posted at police station Mohammadabad. He was deputed to prepare the inquest reports of dead bodies of Brij Raj Singh and Jawahar Singh. He went to the place of incident, examined the dead bodies

and prepared the inquest reports of both the dead bodies and sent both of them for postmortem through constable Lokendra Pal Singh P.W. 5. He found blood near both the dead bodies, took samples of blood stained and plain earth and put them in sealed covers. He also found seven empty cartridges near that place, took them and put them in a sealed cover.

7. Constable Permeshwar Dayal Saxena P.W. 9 went to police station Bewar and gave the papers on 21-6-79 regarding which an entry in G.D. No. 19 was made and a case was registered. After registration of the case, the investigation of this case was shouldered by Sri Harsh Bardhan P.W. 14 S. O. police station Bewar of District Mainpuri. Jagvir Singh complainant of this case met him near village Barahar where his statement was recorded. Thereafter the I.O. went to the Tube-well of Achchey Lal with the complainant, inspected the same and prepared the site-plan Ex. Ka-20. Thereafter, he went to the place of actual incident where he was informed by Vishwa Nath Singh Yadav that the inquest reports of the dead bodies have already been prepared and they have been sent for post-mortem by the Sub-Inspector of P.S. Mohamadabad. He received an information that the appellant is present in village Chhabilepur, search was made, but he was not available. Thereafter the I.O. inspected the place of incident and prepared the site-plan Ex. Ka-21. He also found blood at the place of incident. He searched for appellant Achchey Lal, but he was not available. He recorded the statement of Rajendra Singh injured and also recorded the statement of Mohd. Naeem Khan S.I. On 14-7-79 he recorded statements of some witnesses and submitted the charge-sheet Ex. Ka-22 against the appellant. The other persons associated with the appellant could not be traced.

8. The accused has pleaded not guilty and has not produced any witness in his defence.

9. The prosecution in support of its case, besides the above named formal witnesses, examined Rajendra Singh and Jagvir Singh P.Ws. 1 and 2, who have unfolded the entire prosecution story as mentioned above. Both of them have stated that they were present when the appellant invited the victims for dinner and they went along with two victims Brij Raj Singh and Jawahar Singh to the Tube-

well of Achchey Lal and have stated regarding the above facts. Complainant Jagvir Singh P.W. 2 has stated that somehow he was able to make good his escape and no injury was caused to him. Thereafter, the complainant lodged the F.I.R. at police station Mohammadabad. Rajendra Singh P.W. 1 also received injuries in this incident. He has stated that the F.I.R. was prepared at P. S. Mohammadabad. He was sent for medical-examination to the Government Hospital and thereafter he was shifted to Fatehgarh Hospital for further treatment. He has further stated that actual firing took place at about 12.00 in the mid night. The injuries of Rajendra Singh P.W. 1 were examined by Dr. Shri Krishan P.W. 8 on 21-6-79 at 10.30 a.m. and prepared the injury report Ex. Ka-4. The following injuries were found on the person of Rajendra Singh :-

1. Lacerated gun shot wound on the right temporal region in between the ear and eye size 4 1/2 cm. x 4 cm. muscle deep with blackening around the wound, huge swelling present, injury under observation caused by some firearm.
 2. Lacerated another gun shot wound on the right cheek below the first wound 2 cm., the size of the wound 2 cm. x 1/2 cm. x 3 1/2 cm. in oblique direction towards the ear, blackening around the wound present, Margins inverted. No wound of exit and foreign body felt. Injury under observation caused by some fire-arm.
 3. Abrasion with contusion with blackening around, on the lateral side to deltoid muscle on the right shoulder size 2 cm. x 1/2 cm. simple caused by slipping of the bullet.
 4. There are five gun shot wounds just on the back of left shoulder and up to neck in the area of 15 cm. x 6 cm. each of 1 cm. x 1 cm. different depths with blackening and inverted margins. Swelling present. One bullet recovered from one wound, foreign body feeling due to huge swelling. The injury is under observation, caused by some fire-arm. One bullet recovered from the wound duly sealed and signed and handed over to police. Advised X-ray of skull around left shoulder.
10. In the opinion of Dr. Shri Krishan, the injuries were caused by fire-arm and were about half day old.

11. The other material evidence produced by the prosecution is Munshi Lal alias Munshi Singh P.W. 3, who has corroborated the statements of P.Ws. 1 and 2 to the extent that both of them along with two victims Brij Raj Singh and Jawahar Singh came to his house in village Nagla Swami. Jagvir Singh asked him to get back Rs. 50/- from the Advocate, which were given for filing a case, which was ultimately not filed. He further stated that he offered them to take dinner, but they said that they have been invited by the appellant at his Tube-well and they are going to take dinner.

12. Mahesh P.W. 4 has stated that he along with certain other persons was returning from village Dheerpur to his house. At about 9.30 or 10.00 p.m. when they reached on the road of Mohammadabad-Bewar, they found light of the torches; that they stood in the side and found that appellant Achchey Lal armed with gun was ahead of them and the other miscreants were driving Jagvir Singh, Rajendra Singh, Brij Raj Singh and Jawahar Singh, whose hands were tied.

13. The last material witness of the fact to prove the involvement of the appellant is Vishwa Nath Singh P.W. 11, father of Jawahar Singh and real brother of Brij Raj Singh victim. He has stated that Brij Raj Singh was Hawaldar in the Military. He lent a sum of Rs. 7,000/- to the appellant about two and a half years before the incident; that Brij Raj Singh was demanding his money from the appellant and he also made demand for the same while Brij Raj Singh was on duty; that Brij Raj Singh told him that the appellant has called him at his Tube-well in the night to take dinner and to take money back; that they went for the purpose, but they did not return.

14. The post-mortem examination of the bodies of two victims was done by Dr. A. N. Saxena P.W. 7 and prepared the post-mortem reports Ex. Ka-2 and Ex. Ka-3. The post-mortem report of Brij Raj Singh Ex. Ka-2 shows that it was done on 22-6-79 at 12 noon. The deceased was about 32 years of age and died about 1 1/2 days before. The following ante-mortem injuries were found on the person of victim Brij Raj Singh :-

1. Fire-arm wound of entrance 2 1/2 cm. x 2 1/2 cm. x tissue deep on left side face 5 cm. below the left eye 4 cm. left to left angle of mouth. Margins inverted and

lacerated. Blackening and scorching present around wound.

2. Fire-arm wound of entrance 4 cm. x 4 cm. x cavity deep on left side front of abdomen at 2 O'clock position 13 cm. from umbilicus. Margins inverted and lacerated. Blackening present around wound of entrance.

3. Four fire-arm wounds of exit on back of abdomen in an area of 8 cm. x 8 cm. in an average size of 0.5 cm. x 0.5 cm. x through and through to injury No. 2, 12 cm. above sacrum 3 cm. left front mid line. Margins inverted lacerated. No blackening, scorching and tattooing seen.

15. The internal examination shows that abdomen was empty and the death was caused due to shock and haemorrhage as a result of ante-mortem injuries.

16. The post-mortem Ex.Ka-3 of Jawahar Singh shows that he was about 22 years of age and died about one and a half days before. The following ante-mortem injuries were found on the person of Jawahar Singh :-

1. Fire-arm wound of entrance 2 1/2 cm. x 2 1/2 cm. x tissue deep on left side neck 6 cm below left ear. Blackening present around wound. Margins inverted and lacerated..

2. Fire arm wound of exit 5 1/2 cm. x 4 cm. x through and through to inquiry No. 1 on right side neck 2 cm below right ear Margins inverted and lacerated. No blackening scorching or tattooing present.

3. Fire arm wound of entrance 3 cm. x 3 cm. x cavity deep on left side front of chest at 11.0 clock position, 7 cm. from left nipple. Blackening present around. Margins inverted and lacerated.

4. Abrasion 9 cm x 6 cm. on front of right shoulder.

17. His abdomen was found empty. The death was caused due to shock and haemorrhage as a result of ante mortem injuries.

18. The learned Additional Sessions Judge after discussing the evidence found the appellant guilty for the offences and convicted as above. Aggrieved by it, the

present appeal has been preferred.

19. We have carefully gone through the entire evidence produced by the prosecution and considered the arguments of the learned counsel for the appellant.

20. The careful scrutiny of the evidence shows that the statements are probable and having a ring of truth, they are natural, corroborated by the circumstances and therefore, there can be no reason for doubt.

21. Vishwa Nath Singh PW 11 has stated regarding the motive. He has stated that the victim Brij Raj Singh was Hawaldar in the Military and advanced Rs. 7000/- to the appellant. He further stated that Brij Raj Singh had informed that he was invited for the dinner by the appellant at this Tube well and the appellant has further promised to return the money. His statement, therefore, corroborates the prosecution case that the victim went at the Tube well of the appellant to take dinner.

22. Regarding Mahesh PW 4, the criticism of the learned counsel for the appellant is sufficiently forceful that he is totally a chance witness and did not inform the legal authorities regarding this incident. Even if his statement is left out of consideration, it does not make any material difference. The other material statement is of Munshi Lal alias Munshi Singh PW 3, which corroborates the statements of Jagvir Singh PW 2 and Rajendra Singh PW 1. Both of them have stated that they while going to the Tube well, not Munshi Lal alias Munshi Singh PW 3, who offered them to take food, but they said that they are going to take dinner at the Tube well of the appellant. There is nothing in the statement, which may show that he is stating these facts wrongly. There is no reason for him to implicate the appellant in this incident.

23. There are the statements of Rajendra Singh and Jagvir Singh. Rajendra Singh is an injured witness. He has stated that the appellant and the other accused fired at him and the two victims. He received as many as four injuries. All the injuries have been caused by fire arms and fully corroborated his statement. The statement of Dr. Shri Krishan that the injuries found on the person of Rajendra

Singh, have been caused in the manner as stated by him corroborates his statement. These are serious injuries, which cannot be self-suffered. There is no reason as to why Rajendra Singh is giving false statement. He is, an injured witness and no cogent reason has been shown by the appellant to disbelieve his statement. The other witness of the fact is Jagvir Singh. Regarding him the contention of the learned counsel for the appellant is that he was also tied with rope and shots were fired at him, but he did not receive any injury. It was a night time. Four persons were being shot at. It is not necessary that all the four persons might have been injured. There is nothing unnatural, if he made good his escape unhurt. He is the complainant of this case and lodged the F.I.R. of the incident at 7.45 a.m. The time of the F.I.R. has been corroborated by the statement of constable Mahendra Pal PW 12. After the F.I.R. Mohd. Naeem Khan was given the work to prepare the inquest reports and he prepared the inquest reports on that very day. The inquest reports are Ex.Ka-5 and Ex. Ka 10 which show that the same were ready at 11.00 a.m. and 1.00 p.m. respectively. The promptness in preparation of the inquest reports shows that the F.I.R. was recorded at the time as alleged by the prosecution. The papers were sent to P.S. Bewar, which was received, there on that very day and the investigating was immediately started. It was suggested to Mohd. Naeem Khan PW 10 that he did not note the number of F.I.R. and crime number on the inquest reports. Regarding this fact he has explained that this case relates to P.S. Bewar and therefore, crime was registered at P.S. Bewar. No crime number was allotted till the papers were given to him for preparation of the inquest reports. Therefore, there is no question for writing crime number and the FIR number in the inquest reports. The spot inspection was also made by him, which corroborates the prosecution story. He found the blood near both the dead bodies and we also found seven empty cartridges, which were taken by him and were put in the sealed covers and are Ex. 3/1 to Ex. 3/7. The statement of Jagvir Singh complainant, which has been corroborated by so many circumstances, cannot be rejected on the ground that he did not receive any injury in this incident. It is more so because there is no reason to implicate the appellant in this heinous crime.

24. The statements of the witnesses also find corroboration from the circumstantial evidence, which can never speak lie. The first circumstance showing the

correctness of the prosecution case is that the stomach of both the victims were found to be totally empty. This shows that by the time of the incident i.e. by mid night they did not take food. There can be no reason for their not taking the food in the evening except the reason given by them in their statements. They were invited for food and therefore, they started from their houses without taking food.

25. The other important circumstance is that the witnesses have stated that their hands were tied and were taken from the Tube well to the place of incident. The fact that their hands were tied, is corroborated by the fact that in the hands of the victims AUNGAUCHHA and a rope was found tied. It also shows that the incident had taken place in the manner as alleged by the prosecution.

26. It is contended by the learned counsel for the appellant that the incident had taken place in the night and the appellant has been implicated due to enmity; that there was no reason for Achchey Lal to participate in the crime and he could have concealed his identity or could have kept him aloof and permitted the hired persons to commit the murder. It is further contended that in the F.I.R. and in the statements recorded under Section 161, Cr.P.C. the role of killing and firing has not been assigned to the appellant, that it is an improvement in the evidence wherein the witnesses have stated that the appellant also fired shots from his gun. It is contended that the circumstances show that Achchey Lal appellant could not have accompanied the other accused, even if the incident had taken place in the manner as alleged by the prosecution and therefore, the guilt of the appellant has not been established. It is also contended that there is no sufficient motive for the appellant to commit the murder.

27. We have carefully considered the arguments of the learned counsel for the appellant. It cannot be said that there was no motive for the appellant to commit the murder. There is consistent evidence that the appellant took a loan of Rs. 7000/- from the victim Brij Raj Singh about two and a half years before and was being pressurised to return the same. Therefore, the appellant had every reason to commit the murder so that he may not be forced to return the loan. It is true that in the F.I.R. and statements under Section 161, Cr.P.C. the role of actual firing has not been assigned to the appellant nor it is alleged that he was armed with a gun,

but that is not material. There is consistent evidence at the earlier stages that the appellant was also accompanied with the other assailants. A detailed statement regarding the role of the appellant was given in the trial Court. Even if it is considered that it is an improvement and is rejected for this reason, it is not material. There is a consistent case that the appellant called the victims at his Tubewell and from there the victims were taken to the place of incident by the persons called by the appellant and the appellant accompanied them. Therefore, the appellant has been rightly held guilty with the aid Section 149, I.P.C.

28. It is also true that the incident had taken place in the night, but it cannot be said that there was no occasion for the witnesses to identify the appellant. The victims firstly went to the Tube well of the appellant, where there was a light of electric bulb and the appellant was available there. The victims were taken to far distance by the appellant and the other accused and therefore, there was full opportunity to identify the appellant. It is also true that the witnesses have stated that they have no intimacy with the appellant since before and they never went for taking dinner with the appellant in the past; that they also did not call the appellant to their house and therefore, it is argued that there is no question for the two victims and PWs. 1 and 2 to go for the dinner to the place of appellant. This argument is also devoid of any force. There is nothing unnatural or unusual that the victims and PWs 1 and 2 went to the Tube well of the appellant to take dinner for the first time. There was a reason for them for going for this purpose. Brij Raj Singh was to take back his money. Therefore, the victims were invited to take back their money and also to take dinner. Therefore, they went to take dinner in the natural course and the case of the prosecution cannot be belied.

29. The other important circumstance against the appellant is that there is absolutely no reason for his false implication in this heinous crime. Nobody can be implicated in the heinous crime of double murder for fun or for trifle matters. The learned counsel for the appellant has referred to 'Shankarlal Gyarsilal Dixit v. State of Maharashtra 1981 (18) ACC Summary of Cases 9 : 1981 Cri LJ 325 : (AIR 1981 SC 765). In this case it was observed by the Hon'ble Supreme Court that different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes

to spin stories out of strong suspicions. In the instant case, the dead body of a tender girl, raped and throttled, was found in the appellant's house and, instinctively, every one drew the inference that the appellant must have committed the crime. The observations made in the case arise out of the different set of facts and cannot be transplanted to the facts of the present case, as these observations are not intended to be made universal application. These observations cannot be applied at to the facts of the present case. In the present case the murders have not been committed at the Tube well of the appellant to spin the story that the appellant participated in the murder. The facts and the circumstances of the present case are different.'It is no doubt an established law that the accused have a right to maintain complete silence and is not required to explain reason for his false implication. The prosecution should prove the guilt and should stand on its own legs. Even there are exceptions of these general principles and, in appropriate case an inference from the silence or for the false defence taken by the accused would be taken. In this case the only suggestion that came from the side of the appellant to the witnesses is that they are involved in committing dacoities and were murdered in connection with the same. The appellant in his statement has also not stated this fact, because he knows that the suggestions are false and simply stated that he did not know as to why the witnesses are deposing against him. The suggestions given to the witnesses are false. Brij Raj Singh, victim of this case was in the service of Military and it cannot be accepted that he was involved in committing dacoities. The other victim Jawahar Singh and witnesses PWs 1 and 2 were never challaned in any case. Murders have not been committed at the Tubewell of the appellant. The prosecution witnesses may suppose and presume that the crime have been committed in a particular manner and may depose in accordance with their presumption. However, in the present case there is no reason for the witnesses to presume that appellant Achchey Lal might have participated in the commission of the murder. Therefore, the statements have been given by the witnesses in the present case on the basis of what have been actually seen by them and not on the basis of the presumption.

30. Considering the entire circumstances there is no reason to disbelieve the statements of Rajendra Singh and Jagvir Singh PWs 1 and 2. There is no room to doubt the correctness of the prosecution case. The appellant was, therefore,

rightly convicted for the offences and sentenced by the learned Additional Sessions Judge, Mainpuri. The appeal of the appellant is, therefore, fit to be dismissed.

31. The appeal of appellant Achchey Lal is dismissed and his conviction and sentences are maintained. He shall be sent to jail forthwith to serve out the sentences.

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