

QamruddIn Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-14-2002

Reported in : 2002CriLJ2721

Judge : J.C. Gupta and ;K.K. Mishra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. Appeal No. 1040 of 1981

Appellant : Qamruddin

Respondent : State of U.P.

Advocate for Def. : P.S. Yadav and ;R.S. Maurya, Advs. and ;Niyazuddin, A.G.A.

Advocate for Pet/Ap. : P.N. Mishra, ;Bhagwati Prasad Gupta and ;Apul Misra, Advs.

Disposition : Appeal allowed

Judgement :

1. Aggrieved by the judgment and order dated 20th April, 1981 passed by Shri S.L. Adarsh, the then Addl. Sessions Judge in Sessions Trial No. 280 of 1979 convicting the appellant under Section 302 I.P.C. and sentencing him to imprisonment for life, this appeal has been preferred by the convict-Qamaruddin.

2. Prosecution case, in brief, is that some litigations were going on between the first informant and the deceased on one hand and the accused on the other. Another litigation was pending before the consolidation authorities wherein names of accused Qamaruddin and Fakhruddin had been mutated. On account of this enmity the accused persons decided to do away with the deceased Nijamuddin. With this end in view, the present appellant along with three acquitted accused persons. Karim Bux, Fakhruddin and Abdul Hameed in the night between 8th and 9th May, 1979 at about 12.30 reached the place where deceased Nijamuddin was sleeping. According to the prosecution case itself Nijamuddin was sleeping on a cot outside his house under a Neem tree. As per the case set up in the F.I.R. P.W.I Zafaruddin and his father Bhurey were also sleeping on nearby cots. It is alleged that at about 12.30 in the night Zafaruddin got up on hearing some sound and saw that all the four accused persons were standing near the cot of deceased Nijamuddin. Co-accused Karim Bux uncovered the face of deceased who was sleeping with a quilt and thereafter the present appellant fired a shot from his pistol upon the head of deceased who sustained injury and died on the spot. On the alarm raised by Zafaruddin and his father all the accused persons took to their heels and they were seen by Saeed Ahmad, P.W.2 and others in moonlight.

3. P.W.I, Zafaruddin got the first information report, Ex.Kal scribed by Hakimuddin and lodged the same at police station Saini on the next day at 9.15 a.m. On the basis of this written report, case was registered and investigation ensued. P.W. 4 Shri Ram Pandcy was present when the case was registered. He started the investigation immediately and recorded the statement of first informant Zafaruddin at the police station itself. Thereafter he proceeded for the scene of occurrence and after reaching there he examined the dead body, appointed panches and held inquest. Dead body was thereafter entrusted to constable Jag Mohan P.W.6 for being taken to mortuary. The investigating officer also inspected the scene of occurrence and prepared site plan Ex.Ka 3. He also collected plain and blood stained earth from the scene of occurrence, blood stained Gadda and blood stained Quilt through memo Ex. Ka 4 and Ka 5. The investigating officer also interrogated Saeed Ahmad, P.W. 2 on 17-5-1979. Before he could complete investigation, he was transferred and investigation was taken over by his successor Brij Pal Singh, P.W.3, who after completion of investigation challaned

all the four nominated accused persons and sent them for trial.

4. Before the trial Court prosecution produced six witnesses, namely Zafaruddin, P.W. 1, Saeed Ahmad, P.W. 2, Brij Pal Singh P.W. 3, Shri Ram Pandey P.W. 4, Dr. V. Bhagal P.W. 5 who conducted autopsy and constable Jag Mohan P.W. 6 Who escorted the dead body from the scene of occurrence to the mortuary. Head Constable Rames-hwar Dayal was examined as a Court witness to prove the chick F.I.R. and relevant entries of the general diary.

5. The case of the accused persons was of total denial and they stated of their false implication on account of deep rooted enmity with the first informant. They produced four witnesses in defence namely Chhaggu Khan, D.W.I, Sangam Lal Misra, D.W.2. Keshav Rai, D.W.3 and Mohd. Hanif D.W.4, D.W.I was produced to disprove the presence of P.W.2 Saeed Ahmad near the place of occurrence on the relevant night, whereas other witnesses were produced to prove enmity viz-a-viz the three acquitted accused persons.

6. On a scrutiny of prosecution and defence evidence the learned trial Judge came to the conclusion that the prosecution case as against the appellant has been established beyond reasonable doubt and accordingly the appellant has been convicted and sentenced as stated above. However, the learned Judge acquitted the remaining three accused persons holding that their participation in the crime was not proved beyond doubt.

7. We have heard Shri P.N. Mishra, Sr. Advocate for the appellant. Shri R.S. Maurya, A.G.A. and Shri P.S. Yadava learned counsel for the complainant. We have also perused the record.

8. So far as factum of death of Nijamuddin on account of a single fire arm injury is concerned the same has neither been disputed nor assailed before us by the learned counsel for the appellant. This fact is also otherwise fully established from the evidence on record P.W.5, Dr. V. Bhagat, who had conducted autopsy on the dead body of Nijamuddin, has categorically stated in his statement before the trial Court that during post mortem examination he had found one gun shot injury in the skull area of the deceased which resulted into his death. The ante- mortem injury

was sufficient to cause death in ordinary course of nature. Perusal of the post mortem report Ex. Ka 13 would further show that on opening the dead body it was found that there was a commuted fracture of skull bones and brain was missing. No doubt is thus left in our mind that deceased died a homicidal death due to a single firearm injury.

9. It is next to be seen as to whether the fire arm injury of the deceased was caused by the appellant in the manner as alleged by the prosecution?

10. To prove the charge of murder the prosecution relied upon the testimony of two witnesses, namely, P.W. 1 Zafaruddin and P.W. 2 Sayeed Ahmad. We shall now deal with their evidence.

11. P.W. 1 Zafaruddin is nephew of deceased. He is the solitary eye-witness. He claimed to be sleeping on a separate cot lying in the north of the cot of deceased whereas his father Bhurey was sleeping on a third cot lying in the east of the cot of this witness. It is noteworthy that when the investigating officer visited the scene of occurrence he found only one cot on the spot over which deceased was alleged to be sleeping. In his statement before the Court this witness has stated that he was awakened on hearing some sound but he did not state as to what was the source of that noise/ sound which had awakened him. Neither his cot was found at the scene of occurrence nor the investigating officer has shown in the site plan the place from where the accused was alleged to have fired though according to this witness he had shown that place to the investigating officer when he had inspected the scene of occurrence. According to this witness he saw the entire incident from the very beginning. He stated that when he got up he saw that co-accused Karim Bux had removed the quilt from the face of deceased Nijamuddin and thereafter Qamaruddin fired a shot from his pistol upon the head of the deceased. The witness does not claim that any of the accused persons made any attempt over him or even threatened him not to raise alarm. Accused persons were also highly inimical to the first informant as well and it does not sound to reason that when the accused persons order to carry out their plans had selected odd hours of night and had found the deceased sleeping outside in open sky they would have spared this witness if in fact, he had woken up at the time of

occurrence and was within the view and shooting range of the assailants. The very fact that this witness was not touched nor any attempt was made over him coupled with the fact that no other cot was found on the scene of occurrence make the presence of this witness at the scene of occurrence highly doubtful. Apart from this the conduct of this witness also makes his presence doubtful. In the cross-examination he has admitted that after the occurrence many villagers had arrived at the scene of occurrence including Pradhan and Up-Pradhan. He further admitted that Pradhan was having a licensed gun of his own but he did not tell them the names of assailants of his uncle nor asked them to report the matter to the police. He further admitted that he did not go to the house of accused persons in spite of villagers having assembled at the scene of occurrence. Even in the morning before he left for the police station he did not disclose to any villager that his uncle had been murdered by the appellant and his associates. This prolonged silence on his part creates a further dent in the veracity of his claim of having seen the incident.

12. P.W. 2 Saeed Ahmad has stated that he saw the accused persons running in the Rasta in the moonlight after the commission of murder of the deceased when they were making their escape good. This witness was a resident of Lal Bangla. According to him he was coming back from village Alipurjeeta after having a feast at his sister's place. In the examination in chief he stated that he was coming to his village through village Nizam-Mai. In cross-examination he in clear words admitted that the place of occurrence would not fall in the way from village Alipurjeeta to his own village. Village Nizam-Mai was removed about 11/2 furlong from his village. He further stated that he was not coming from the way which laid in the north of the field of alarm Bux. He was coming through Rasid Mai village. He specifically stated that he was not coming through village Nizam Mai. He was confronted with his earlier statement recorded by the investigating officer wherein he had stated that he was coming to his village through Nizam Mai village. Realizing the difficulty that if he was coming through village Nizam Mai the place of occurrence would not lie in the way, it appears to us that he changed his stand in the trial Court and took a somersault. He was a chance witness and inimical too. After going through his evidence we further find that it was highly doubtful that this witness could have identified the fleeing assailants from a long distance. D.W. 1

Chhaggu Khan was examined from defence side. He is father-in-law of sister of P.W.2 Saeed Ahmad. He has categorically stated that there was no feast at his daughter's place. He further stated that P.W. 2 Sayeed Ahmad had not come to her house on the relevant night. We may further point out that the trial Court has itself discarded the evidence of this witness for cogent and valid reasons and we find no sufficient reasons to differ with the view taken by the trial Court. The testimony of Saeed Ahmad can safely be left out from consideration.

13. We are thus left with the sole testimony of P.W. 1 Zafaruddin. We have already shown above that presence of this witness at the scene of occurrence at the relevant time was highly doubtful. He himself is an inimical and interested witness. His testimony has been found by the trial Court to be only partly reliable as three other accused persons have been acquitted. There is no other corroboration of his testimony viz a viz the appellant. It is well settled principle that it is hazardous to base conviction upon the uncorroborated testimony of a single witness who has been found to be partly reliable and partly unreliable. Apart from this legal infirmity, the testimony of this witness does not inspire confidence and we find it highly unsafe to accept his claim that he could get up in time to see the appellant firing upon the deceased. It was in case of single shot, hit and run during dead hours of night. By the time this witness could get up the assailants in all probability must have run away.

14. Besides the aforesaid weaknesses and infirmities in the prosecution case, we further find that the F.I.R. in the present case was lodged with a considerable delay. The incident according to the prosecution case had occurred at 12.30 in the night and had been witnessed by the nephew of the deceased. According to him soon after the occurrence a large number of villagers had assembled at the scene of occurrence including Pradhan and Up- Pradhan yet no effort was made to get the report lodged before 9.15 a.m. Realizing this difficulty P.W. 1. Zafaruddin was made to state for the first time in the trial Court that he could not go to the police station to lodge the report during night hours on account of fear of accused persons. Such an explanation was neither disclosed by him in the F.I.R. nor in the statement given to the investigating officer during investigation. In addition to the fact that this was a developed explanation made for the first time before the trial

Court. We further find that the same is also otherwise not convincing, inasmuch as even as per the statement of P.W. 1 a number of villagers had arrived at the scene of occurrence including Pradhan and Up- Pradhan, therefore, there was hardly any reason for this witness not to have left for the police station earlier. The distance of police station from the scene of occurrence was only six miles. It was the month of May. Even if he wanted to avoid darkness he could have easily left for the police station early in the morning and in that even F.I.R. would have come into existence at least two hours earlier than the time it was lodged. In any view of the matter there are glaring circumstances appearing in the case to create a doubt that the F.I.R. was lodged at the time it purported to have been made in the Chick report it is mentioned that the copy of F.I.R. would be sent on 10-5-1979 C.W. 1 Rameshwar Dayal who was examined to prove the Chick F.I.R. and G.D. entries has stated that though in the Chick F.I.R. the date of sending F.I.R. has been mentioned as 10-5-1979 but it was sent on 9-5-1979. This we are not prepared to accept. The post-mortem examination was conducted as late as on 11-5-1979 at 3.30 p.m. Relevant papers were also received by the doctor on the same day. Dead body had reached on 10-5-1979 in the morning, then why this delay occurred in receiving the relevant papers including the copy of F.I.R. has not been explained from the prosecution side. All these circumstances thus create a doubt if the F.I.R. had come into existence at the time it purported to be.

15. Having carefully examined the evidence on record we are of the view that it is highly hazardous to accept the sole interested and only partly reliable evidence of Zafaruddin. P.W. 1 and accordingly we are unable to sustain the conviction of the appellant as recorded by the trial Court. The appellant, like all other acquitted persons, is also entitled to get the benefit of doubt.

16. For the reasons stated above appeal is allowed. Conviction and sentence of the appellant as recorded by the trial Court are set aside. He is acquitted of the offence charged for. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.