

Anandi and ors. Vs. State

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Court : Uttaranchal

Decided On : Jul-16-2010

Judge : B.C. Kandpal and; Nirmal Yadav, JJ.

Appellant : Anandi and ors.

Respondent : State

Disposition : Appeal dismissed

Judgement :

B.C. Kandpal, J.

1. Both the above appeals, arise out against the same judgment and order dated 26-8-2006, passed by Additional District and Sessions Judge/F.T.C., Kashipur, District Udham Singh Nagar, in S.T. No. 293/2002, State v. Deepak and three Ors. therefore, they are being decided by this common judgment. By the impugned judgment the learned Additional Sessions Judge has held guilty all the accused/appellants Deepak, Bablu, Anandi and Rajendra @ Raju Under Sections 302/34, 307/34, 324/34 and 354/34 I.P.C. All of them were sentenced to life imprisonment Under Sections 302/34 and 307/34 I.P.C. and a fine of Rs. 5000/- each and in default of payment of fine to further undergo R.I. for one month. They were further sentenced to undergo two years R.I. Under Section 324/34 I.P.C. and two years R.I. Under Section 354/34 I.P.C. However, the sentences were to run concurrently.

2. Brief facts of the prosecution are that complainant Sandeep Kaur lodged written report, Ext. Ka.1, at P.S. Jaspur, at 8.10 a.m. on 10.5.2002, with the allegations that in the night of 9/10 June, 2002, she was sleeping in her room and her father Jeet Singh, brother Hardeep Singh, sister-in-law Jitender Kaur and Sandeep Singh, son of her maternal uncle were sleeping in the court-yard. In the mid night at about 12.00 she heard the shrieks of her sister-in-law and she came out of her room and saw that Deepak, Bablu sons of Anandi and Raju son of Rampal along with others with iron-handles gave vital blows on the heads of her father, sister-in-law, Hardeep Singh and Sandeep Singh, due to which all of them became unconscious. Anyhow she raised alarm and then her neighbours Sewa Singh, Bichitra Singh came at the scene of occurrence and they also saw the occurrence. The injured were brought to M.P. Singh Nursing Home for treatment. It is further alleged in the F.I.R. that these persons also caused injuries to Nanhe and his wife. On the basis of written report, chick F.I.R. Ext. Ka. 11 was prepared at the police station and a case crime No. 286/2002 Under Section 307/323 I.P.C. was registered against the accused persons vide G.D. No. 11 dated 10.6.2002 at 8.10 a.m., carbon copy of which is Ext. Ka. 12.

3. The investigation was entrusted to Khyali Ram Tamta. He visited the place of occurrence and seized the plain and blood-stained earth from the place of occurrence and prepared recovery memo, Ext. Ka.29. On 11.6.2002 the I.O. arrested accused Deepak and on his pointing out weapon of assaults handle of Hand Pump and a spade got recovered vide recovery memo Ext. Ka.30. The I.O. also visited the place of occurrence and prepared site plan, Ext. Ka.31. On 13.6.2002 on the death of injured Nanhe the case was converted into Section 302 I.P.C. and prepared inquest report, Ext. Ka. 32 and after completing necessary formalities sent the dead body for post mortem. The injured Jeet Singh died on 14.6.2002 in Sain Hospital Moradabad. The I.O. also performed inquest on his dead body. On 23.6.2002 accused Anandi was arrested. The I.O. took statements of injured eyewitnesses. Thereafter investigation was entrusted to Inspector Ishwari Dutt Joshi. He arrested accused Deepak, Bablu, Anandi and Rajendra and submitted charge sheet, Ext. Ka. 33 against the accused persons.

4. The injured Jeet Singh, Smt. Jitendra Kaur, Hardeep Singh and Sandeep Singh were medically examined by Dr. M.P. Singh in M.P. Singh Nursing Home Jaspur on 9/10.6.2002 at about 1.00 a.m. He found following injuries on the person of Jeet Singh-

1. Lacerated wound 8' x 1cm x bone deep on left side of head.
2. Lacerated wound on left ear.

The doctor found bleeding from left ear. The injured was in semi conscious condition. He prepared injury report, Ext. Ka.2.

He found following injuries on the person of Jitendra Kaur-

1. 3' x 1cm x bone deep wound (lacerated) on left side of head.
2. 2' x 1cm x bone deep lacerated wound on left side of head.
3. 3' x 1cm x bone deep lacerated wound on occipital region of head.
4. 3' x 1cm x bone deep lacerated wound on occipital region of head.
5. 3' x 1cm x bone deep lacerated wound on right head.
6. Lacerated wound 1' x 1/2 cm on temporal region, right side nose.

The doctor prepared injury report, Ext. Ka.3.

He found following injuries on the person of Hardeep Singh-

1. 2' x 1cm bone deep injury on left side of forehead, 1' above left eye.
2. Lower jaw was fractured.
3. 1' lacerated wound from left angle of mouth.

The doctor prepared injury report, Ext. Ka.4.

The doctor found following injury on the person of Sandeep Singh-

Lacerated wound 2'x2'x bone deep, 3 1/2 ' above lf left eye brow.

The doctor prepared injury report, Ext. Ka.5.

In the opinion of the doctor the injuries to the patients were fresh and they were referred to some higher Hospital for better treatment.

Dr. M.P. Singh further examined Nanhe the same day at 5.45 a.m. and found following injuries on his person-

1. lacerated wound 3 x 1cmx bone deep on left forehead, 3cm above the left eye.
2. Lacerated wound 1xcm left side of face , 3cm below the left eye.
3. Lacerated wound 1x 1cm on left side of face, 2cm below the injury No. 2.

In the opinion of the doctor all the injuries to Nanhe were fresh in duration and caused by hard object. He prepared injury report Ext. Ka. 14.

5. Dr. Mukesh Gupta, medically examined injured Dayawati on 10.6.2002 at 5.30 am and found three lacerated wounds on her forehead and face.

6. Dr. B.C. Joshi, Medical Officer L.D. Bhatt, Govt. Hospital conducted autopsy on the dead body of Nanhe on 13.6.2002 at 1.30 p.m. and found the following injuries on his person-

1. Contusion 4x3cm on left side of ear.
2. Abrasion 4x 3cm on left cheek.
3. Fracture of left side mandible.
4. Abrasion on lower part of back.
5. Abrasion 8 x3cm on left side of leg.

In the opinion of the doctor the death was caused due to coma as a result of head injuries. The doctor prepared autopsy report, Ext. Ka. 10.

7. Dr. D.S. Ahlawat, Medical Officer in District Hospital Moradabad, conducted post mortem on the dead body Jeet Singh on 15.6.2002, at 4.35 P.M. and found the following ante mortem injuries on his person-

1. Stitched wound 15 cm long, with 30 stitches on left side head with ear.

2. Trachea steamy wound 2cm long, with two stitches on the neck, 4cm above supra standard march.

3. Abrasion 4cm x 2cm on left leg, 4cm above right ankle.

4. Abrasion 2cm x 1cm on dorsum of right wrist. In the opinion of the doctor the cause of death was coma as a result of head injury. He prepared autopsy report, Ext. Ka.27.

8. After receipt of charge sheet against the accused persons, the C.J.M. Kashipur, committed the case to the court of Sessions.

9. Charges Under Sections 302/34, 307/34, 324/34 and 354/34 I.P.C. were framed against the accused persons, to which they pleaded not guilty and claimed to be tried.

10. The prosecution in support of its case examined P.W. 1, Smt. Sandeep Kaur, P.W. 2, Smt. Jitender Kaur, P.W.3, Hardeep Singh, P.W.4, Sandeep Singh, P.W.5, Smt. Dayawati, P.W.6, Udayraj, P.W.7, Dr. M.P. Singh, P.W.8, Dr. B.C. Joshi, P.W.9, Head Constable Revti Nandan, P.W. 10, Sucha Singh, P.W. 11, Dr. Mukesh Gupta, P.W. 12, Dr. D.S. Ahrat, P.W. 13, Ishwari Dutt Joshi and P.W. 14, S.I. S.C. Joshi.

11. The accused persons in their statement Under Section 313 Cr.P.C. denied the prosecution allegations and alleged that they have falsely been implicated in the case.

12. The learned trial court, after hearing learned Counsel for parties and going through the evidence on record, found all the accused/appellants Deepak, Bablu, Anandi and Rajendra @ Raju Under Sections 302/34, 307/34, 324/34 and 354/34 I.P.C. and sentenced them to life imprisonment Under Sections 302/34 and 307/34

I.P.C. and a fine of Rs. 5,000/- each and in default of payment of fine to further undergo R.I. for one month. They were further sentenced to undergo two years R.I. Under Section 324/34 I.P.C. and two years R.I. Under Section 354/34 I.P.C. The sentences were to run concurrently.

13. Feeling aggrieved, accused Anandi filed Criminal Appeal. All the accused including Anandi also filed Criminal Jail Appeal.

14. None has appeared in criminal appeal. We have heard Sri Amarnath Sharma, learned Amicus Curiae on behalf of all the accused/appellants in criminal jail appeal and Sri Nandan Arya, learned A.G.A. and perused the record.

15. At the outset, it is to be stated that the prosecution in support of its case, produced as many as four injured witnesses of the occurrence. They are P.W.2, Smt. Jitender Kaur, P.W.3, Hardeep Singh, P.W.4, Sandeep Singh @ Sarandeep Singh, and P.W.5, Smt. Dayawati. Besides above injured witnesses, P.W. 1, Smt. Sandeep Kaur and P.W.6, Uday Raj are eyewitnesses of the occurrence.

16. Learned Amicus curiae has submitted that there are major contradictions in the statements of the eyewitnesses and injured witnesses, which is fatal to the prosecution case and the learned trial court should not have convicted the accused/appellants.

17. We do not find any force in the submission of learned Amicus Curiae. The manner in which the occurrence has taken place, has been fully supported by all the injured witnesses, as well as by the other two eye witnesses. According to P.W. 1, Smt. Sandeep Kaur who was sleeping inside the house of her father Jeet Singh deceased, has narrated the prosecution story to the effect that on 9/10-6-2002 in the mid night she was sleeping in drawing room, her sister-in-law and her child were sleeping in a cot in the courtyard, her father Jeet Singh was sleeping in a cot in the courtyard, her brother Hardeep Singh and Sandeep Singh(son of her maternal uncle) were sleeping in another cot in the same courtyard. She heard the shrieks of her sister-in-law and she came in the courtyard, and saw that son of Anandi, Deepak, Bablu, Raju S/o Rampal, and Anandi himself, who were having iron-handles in their hands, were doing marpit with her father Jeet Singh, sister in

law, Jitendra Kaur, her brother Hardeep Singh and her maternal uncle's son Sandeep Singh @ Sarandeep Singh and all of them sustained grievous injuries at the hands of the accused/appellants. She further deposed that when she raised alarm, Sewa Singh and Bichitra Singh arrived there and they also saw the incident. She also deposed that the injured persons were carried to M.P. Singh Nursing Home Jaspur. She further deposed that all these four accused persons in the same night also sustained injuries on the persons of Nanhe and his wife, Smt. Dayawati, who was watchman in the Budhsen Garden. She further deposed that the accused persons also snatched the golden ear-ring of her sister-in-law. This witness further deposed that the report of the incident was dictated by her to Sucha Singh in the M.P. Singh Hospital and lodged it at P.S. Jaspur. She has proved the written report, Ext. Ka. 1. This witness has further deposed that she knew all the four accused from before, they were doing labour work in the fields of her village.

18. P.W.2, Smt. Jitender Kaur, P.W.3, Hardeep Singh, P.W.4, Sandeep Singh @ Sarandeep Singh, who are injured witnesses of the occurrence which took place in the courtyard of the house of deceased Jeet Singh, have fully corroborated the statement of P.W. 1, Smt. Sandeep Kaur, who had seen the occurrence on hearing the shrieks of her sister-in-law P.W.2, Smt. Jitender Kaur. All these witnesses are consistent on the point of time of occurrence, place of occurrence and other relevant factors pertaining to the occurrence. They have given the time of occurrence at about 12.00 in the mid night. Regarding weapons of assault all these witnesses have narrated that the accused persons were having iron-handles. P.W.2, Jitender Kaur has further deposed that accused Raju gave iron-handle blow on her head, accused Bablu, Deepak and Anandi got injured her husband, her father-in-law Jeet Singh and Sandeep Singh with iron-handles. P.W.3, Hardeep Singh deposed that they were sleeping in the courtyard of the house and an electric bulb was emitting light there. This witness further deposed that on hearing noise his sister, who was sleeping in the drawing room came there and on raising alarm by her and by them, Bichitra Singh and Sewa Singh, their neighbour, came there and thereafter accused fled away from the place of occurrence.

19. P.W.4, Sandeep Singh @ Sarandeep Singh has deposed that deceased Jeet Singh was husband of his parental aunt. He often used to visit the house of Jeet Singh and in the night of occurrence, i.e. 9/10-6- 2002, he was sleeping in the house premises of Jeet Singh along with Hardeep Singh in a cot, Jitender Kaur with her child was sleeping in another cot and at a distance of about 4-5 paces Jeet Singh was sleeping. Accused persons entered the house premises at about 12 in the night and they were having iron-pipe handles. They firstly gave iron-handles blows on Jeet Singh, then to sister-in-law and then attacked on him and Hardeep Singh. He specifically deposed that Deepak and Bablu gave iron handles blows upon him and Hardeep Singh. He further deposed that he regained his consciousness in Sain Hospital at Moradabad. He further deposed that Jeet Singh succumbed to the injuries in Sain Hospital at Moradabad.

20. Therefore, we find that all the above witnesses have fully supported the prosecution version. Their statements find full corroboration with each other on all the relevant points of the occurrence. We do not find any material contradictions in their statements, which may cast a doubt on the truthfulness of the prosecution version. The defence has not suggested any of these of the witnesses as to why they would falsely depose against them would leave the real culprits. We find the statements of above eyewitnesses reliable and cogent.

21. The another part of the prosecution case is that in the same night all the four accused persons committed the murder of Nanhe and caused injuries to his wife Smt. Dayawati. P.W.5, Smt. Dayawati has deposed about this part of incident. She has stated on oath that at the time of occurrence, her husband Nanhe, she and her son Uday Raj and Ansu Lata, daughter of her husband's sister were residing in the garden of Budhsain within the boundary of P.S. Jaspur. Her husband was watchman there and they used to reside in a corner of the garden. She further deposed that at the time of occurrence they were sleeping outside the house. At about 12 in the night accused Anandi, Deepak, Raju and Bablu came there. Deepak put his hand on her breast and she made a noise, whereupon her husband Nanhe and her son Uday Raj woke up. She further deposed that all the four accused were having iron-rods and handles of iron pipe in their hands and they did marpit with her, her husband and her son. They were also carrying Ansu

with them, but on their noise people residing in the vicinity came there and then the accused persons fled away towards their house. This witness further deposed that they in injured condition went Government Hospital, Jaspur and from there her husband was referred to Rudrapur Government Hospital for better treatment. The doctor at Rudrapur referred her husband to Haldwani and while he was being carried to Haldwani, her husband succumbed to the injuries in the way. This witness Smt. Dayawati was medically examined at P.H.C. Jaspur, at 5.30 am in the morning of the incident and the doctor has found three lacerated wounds on her person.

22. P.W.6, Uday Raj son of P.W.5, Smt. Dayawati, has fully corroborated the deposition of his mother Smt. Dayawati. This witness has named all the four accused persons as the offenders. He has further deposed that at the time of occurrence light was emitting from the electric bulb fitted at the Tube-well. This witness has deposed that accused persons did marpit with them with iron-pipe handles. He also sustained injures. His father Nanhe and his mother Smt. Dayawati also sustained grievous injuries at the hands of the accused persons and his father succumbed to the injuries lateron.

23. The learned Amicus Curiae appearing on behalf of the accused/appellants has vehemently submitted that the prosecution has not proved the motive with the accused for committing the murder of Jeet Singh and Nanhe and sustaining injuries to other injured witnesses and no reason has been shown as to why these accused/appellants would commit the offence.

24. We do not find any merit in the above submission of learned Amicus Curiae. It is true that the prosecution has not come forward with a motive against the accused/appellants for committing the offences, but it is settled principle of law that where there is an eyewitness account, it is not necessary to find out the motive of the crime. As has been stated earlier, there are as many as four injured witnesses and two eyewitnesses who have seen the occurrence. Here it will not be out of place to mention that according to P.W. 1, Smt. Sandeep Kaur accused persons also snatched the golden ear-right of her sister-in-law. P.W.5, Smt. Dayawati also narrated that accused Deepak put her hand on her breast. From the

above statements of above two witnesses, the intention of accused/appellants is clear. They had the intention to do marpit, and commit murder of the victims. Therefore, we find that the prosecution version cannot be doubted merely because no specific motive has been put forth by the prosecution.

25. Learned Amicus Curiae also submitted that the I.O. has not described the source of light in the site-plan and in the dark mid night it was not possible for the witnesses to identify the accused/appellants. He also submitted that no identification parade of the accused/appellants has been conducted therefore, with certainty it cannot be held that the culprits were the accused/appellants.

26. We further do not find any force in the above argument of learned Amicus Curiae. In the statements of injured eyewitnesses has come that electric bulb was emitting light in the courtyard of deceased Jeet Singh firstly where the occurrence took place. Pertaining to subsequent offence, in the statement P.W.6, Uday Raj it has come that they had seen the incident in the light of electric bulb burning at Tubewell. The prosecution witnesses also stated that these accused persons were doing labour work in the fields of their village and they were well known to them from prior to the incidents. Therefore, in the above facts and circumstances of the case, mere non- mentioning the source of light in the site-plan by the I.O. does not affect the probability of the prosecution case. We find that the witnesses have witnessed the occurrence in the light of electric bulbs at the place of occurrence and their presence at the scene of occurrence cannot be doubted.

27. The injured persons Jeet Singh(deceased), Smt. Jitender Kaur, Hardeep Singh and Sandeep Singh were medically examined by the Dr. M.P. Singh soon after the occurrence without any delay and the doctor has mentioned the injures in the injury reports prepared by him. Most of the injures found on the persons of the injured/deceased persons were lacerated wounds, fracture and abrasions. Dr. Mukesh Gupta, medically examined injured Dayawati at 5.30 a.m. on 10.6.2002 and found contusion, fracture of lower part of mandible and two abrasions.

28. P.W.8, Dr. B.S. Joshi, who conducted autopsy on the dead body of Nanhe has opined that the injuries could be caused by iron-pipe handles at about 12 in the night on 9/10-6-2002. P.W. 12, Dr. D.S. Ahtawan, who conducted post mortem on

the dead body of another deceased Jeet Singh, has opined that the death of deceased was caused due to injury No. 1, which was found on the head extending upto ear on left side. Therefore, we find that the medical evidence fully corroborates the ocular version.

29. We also find that prompt F.I.R. of the occurrence has been lodged at the police station and there is no inordinate delay in it. Therefore, the promptness in the F.I.R. rules out any possibility of false implication and fabrication. The complainant P.W. 1, Smt. Sandeep Kaur has specifically named all the accused persons and the relevant factors relating to the occurrence in the F.I.R. and the authenticity of the F.I.R. cannot be doubted in any manner.

30. In view of foregoing evidence on record, we find that the prosecution has been successful in establishing its case against the accused/appellants beyond all reasonable doubts. We are of the considered view that the accused/appellants in furtherance of their common intention, in the same transaction of their unlawful act, committed the offence of house trespass by night, caused the murders of Nanhe and Jeet Singh, sustained injuries to other injured witnesses Smt. Jitender Kaur, Hardeep Singh, Sandeep Singh and Smt. Dayawati, with intention to kill them, and their offences are punishable Under Sections 302/34, 307/34, 324/34 and 354/34 I.P.C. as has been found proved by the learned trial court. Therefore, we do not find any ground to interfere in the finding arrived at by the learned trial court. Both the appeals lack merit and are liable to be dismissed.

31. Both the appeals are dismissed. The impugned judgment and order convicting the accused/appellants Under Sections 302/34, 307/34, 324/34 and 354/34 I.P.C. and sentencing each of them to life imprisonment Under Sections 302/34 and 307/34 I.P.C. and a fine of Rs. 5000/- each and in default of payment of fine to further undergo R.I. for one month; to further undergo by each of them to two years R.I. Under Section 324/34 I.P.C. and two years R.I. Under Section 354/34 I.P.C. is upheld.

32. All the accused/appellants are in jail. They shall be detained in prison in order to serve out the sentences passed by the trial court against them.

33. Let a copy of this judgment be placed in the file of Criminal Jail Appeal No. 233/2006.

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