

Bali Ram Vs. State of U.P.

Bali Ram Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/951756

Court : Allahabad

Decided On : Feb-06-2012

Reported in : 2012CrLJ2890

Judge : Dharnidhar Jha & Ashok Srivastava

Appeal No. : Criminal Appeal No. 881 of 1983

Appellant : Bali Ram

Respondent : State of U.P.

Judgement :

1. This appeal, arising out of the judgement dated 23.3.1983 passed by the learned VIII Addl. Sessions Judge, Ghaziabad in Session Trial No. 298 of 1981, has been preferred by solitary appellant, who, after having been convicted of an offence under section 302 I.P.C. was directed to suffer rigorous imprisonment for life.

2. The fact was that the deceased Natthu Ram and the present appellant Bali Ram along with a third person, namely, Tota Ram were smoking Hukka. The deceased on the one hand and two accused persons named in the F.I.R. on the other, firstly, entered into a verbal dual as regards the duration for which they would enjoy the smoke. The son of Tota Ram, the present appellant Bali Ram is said to have gone to his house and to come back with Khutpawre (an instrument to carve out cattle dung). The appellant is said to have given a blow with the article just after

having arrived at the place of occurrence which was the chauk in front of his house.

3. The informant stated that he took his father to the village hospital and as per his statement in the F.I.R. the doctor also administered some injection to the deceased, but later on declared him dead. The informant came to the police station Noida to lodge the written report Ex. Ka- 1.

4. As may appear from the evidence of Ishwar Chand, Head Moharrir (PW 4) posted in the police station, F.I.R. Ext. Ka-12 was drawn up on the basis of Ext. Ka-1 and the investigation was started by P.W.3, S.I. Indra Singh who came to the place of occurrence to find the dead body for holding inquest Ext.Ka-2 upon it and also for seizing the blood stained earth as may appear from Ext. Ka-7, besides, for searching the house of the accused so as to recovering the Khutpawre after preparing Ext. Ka-10, Khutpaware has been marked as material Ext. 1 as appears from the deposition of P.W. 4.

5. The Investigating Officer prepared letters addressed to the Chief Medical Officer and also to the Reserved Inspector of Police Lines and also the dead body challan for dispatching the dead body for post mortem examination. Those documents have been marked Ext. Ka-3 to Ka-7. He recorded the statements of witnesses and also got back the post mortem examination report Ext. Ka-14 and, thereafter, sent up this solitary appellant for trial.

6. During the course of the trial 6 witnesses were examined, out of whom the informant Gajai Singh and a person named in the F.I.R., namely, Kalu Ram turned up to support the prosecution story as eye witnesses. They were examined as P.Ws. 1 and 2 respectively. Dr. B.K. Agarwal has held post mortem examination on the dead body of Natthu Ram, and, as we have just indicated, issued report on that behalf Ext. Ka-14. After considering the evidence of witnesses the impugned judgement was passed.

7. The defence of the appellant was two fold. firstly, that he had not committed the offence as complained of rather that some one had assaulted the deceased in the previous night after having robbed him. This suggestion given appears at page 16

of the paper book. The other suggestion appears at the end of deposition of P.W.1 and that was that 2-3 days prior to the incident between the deceased and the present appellant a hot talks had ensued between the sides, flowing drain water and on that account the appellant was falsely implicated. We find that the learned trial Judge was not moved by the defence which was set up by the appellant before him and rejected the same.

8. While arguing Sri R.K. Rai, learned counsel appearing for the appellant submitted that the informant was not an eye witness and the doctor's evidence was materially affecting the time of occurrence and the material parts of the prosecution case. It was urged that the copy of special report was sent to the Magistrate with utmost delay raising the probability that the same was created after due deliberation and consultation. Learned counsel took us through the evidence of all 6 witnesses so as to buttress the above arguments. It was, lastly, contended that the offence could not be one for which the appellant was found guilty and it may be u/ss 304 II or 325 I.P.C,

9. Sri A.N.Mulla, learned A.G.A. countered the arguments. as regards the two witnesses, P.W. 1 and P.W. 2, not being as eye witnesses, and also submitted that the opinionative evidence of the doctor could not be conclusive in the matters of probalising the manner of the occurrence unless there was flagrant conflict in between the oral and medical evidence. The report was promptly despatched. It was submitted that the court may consider the argument of defence as regards the constitution of the offence other than the appellant was held guilty of.

10. It is true, section 157 Cr.P.C. directs the despatch of the report to the nearest Magistrate forthwith. The word "forthwith" has been explained by courts to mean the despatch of the report with promptitude eliminating any chance of raising any inference as if the same could have been purposely delayed for making consultations and deliberations so as to weaving out a story for implicating some innocent persons. While so laying down the law, it has also been pointed out that merely suggesting the delay in despatch of the report may not be sufficient in itself to discard the document as a collusive, fabricated record unless foundation in that behalf was laid by the defence after bringing on record the evidence in that behalf

which could be suggesting some ulterior motive for withholding the record, i.e., the F.I.R. and not dispatching it with promptitude. As regards the present case, we have the privilege of looking to the original lower court record which is with us. The evidence of P.W. 4 Ishwar Chand, Head Moharrir, indicates that the copy of the document was despatched from the police station on the very next date of the occurrence, i.e., on 2.7.1980. Learned counsel appearing for the appellant was taking us to the original document to submit that the same was received by the court below on 10.7.1980. But, we find that the signature with date of the Circle Inspector in token of receipt of one of the copies of the document indicated that the same had been received at its destination on 2.7.1980. We could not get any evidence to support the submission of Sri Ravindra Kumar Rai, learned counsel appearing for the appellant and we find that the submission is to be considered only for being rejected.

11. So far as the submission that P.W. 1, informant, was not an eye witness is concerned, we could note down that from the very F.I.R. also that submission was not available because nowhere in that written report Ext. Ka-1, P.W. 1 could be said to have made any statement which could render him not as an eye witness. Moreover, we have considered his evidence especially that in cross-examination, at page 15 of the paper book, and we find him making statement in reply to question put to him during his cross-examination which made him not only an eye witness but a very competent one on that. He has stated that when the deceased and the accused person were enjoying smoking Hukka, at that particular moment he was inside his house, but after picking up the commotion due to altercation between the parties, he came out from his house and found them having noisy verbal duel and during that course a blow was wielded by the appellant, as a result of which the deceased fell down. Not only the above evidence of P.W. 1, when we considered the evidence of P.W. 2 Kalu, who is named as a witness in the F.I.R., we find him again a competent person who could see the offence being committed in his presence with his own eyes. He has stated in his cross-examination, which appears at page 19 of the paper book, that when the altercation between the parties was going on, none of the persons of the neighbourhood came there and also that he had not attempted to snatch the khutpaware of the appellant with which he dealt a blow and ran away and he did not chase him. Thus we find the

informant and the other witness Kalu competent persons in whose presence the real part of the occurrence had taken place.

12. It is true that the defence has suggested that the deceased had been killed in the previous night and the appellant was implicated due to some earlier altercations on the issue of flowing of drain water, but we find an honest admission coming from P.W. 1 in his cross-examination, which appeared at page 13 of the paper book. He has denied the suggestion that the appellant was falsely implicated on account of altercation on flowing water, but by the cross-examination of P.W.1 at two different places, which appears at pages 14-15 of the paper book, the defence has brought sufficient evidence on record indicating that the informant was a non controversial person who never went to the police station prior to the lodging the present report for complaining against any one and, further, that he had very categorically stated that he did not have any ill will towards the present appellant and it was a sudden fight which had occurred during Hukka smoking.

13. This story of sudden fight during enjoying Hukka was part of the story which comes on record that has influenced us to consider the argument of the learned counsel appearing for the appellant as regards the constitution of the offence. It is true that the learned trial Judge has found the appellant guilty of committing the offence under section 302 I.P.C., but in the whole evidence of two eye witnesses and the Dr. B.K. Agarwal, P.W. 5, there does not appear a single line of evidence which could indicate that the act was accomplished with pre mediation and further that the appellant appeared committing the act of giving a single blow with the instrument, intending to commit the murder of the deceased or was knowing consciously that his act was so eminently dangerous that the same in all probabilities would cause the death of Nathu Ram. There is complete absence of evidence on these scores. P.W. 5, Dr. B. K. Agarwal has also not stated that the injuries or any of the two injuries was sufficient in ordinary course of nature to cause death. We have already referred to the evidence of P.W. 1, at page 15 of the paper book, which indicates that it was a quarrel which culminated ultimately into a sudden act committed on impulse or probably in anger which caused the death of the deceased. We are as such of the opinion that the appellant would have been convicted under section 304 II I.P.C. instead of under section 302 the

Penal Code.

14. This brings us to consider as to what sentence should be imposed upon the appellant. The incident occurred as back as on 1.7.1980. It is true that the deceased was aged about 48 years on the date of occurrence ,but it is also another part of the truth that the present appeal remained pending since 1983, i.e., for about 19 years. The pressure of being convicted and sentenced to rigorous imprisonment for life would have always been looming in the mind of present appellant. He has in addition to it, bear the expenses of litigating in the lower court as also before this Court. We are conscious that a life has been lost, but considering the above circumstances we direct the appellant to suffer rigorous imprisonment for five years and also to pay a fine of Rs. 10,000/- which shall be paid as compensation to the next of the kin of the decease Natthu Ram under section 357 Cr.P.C. In case of non payment of compensation which we have just directed to be paid by the appellant, he shall have to under go an additional period of one and half years' rigorous imprisonment.

15. With the above modification in the order of conviction and sentence we dismiss the appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com