

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1506 of 2009

Kamla Kant Dubey

.... Appellant

Versus

State of U.P. & Others

.... Respondents

WITH

CRIMINAL APPEAL NO.2409 of 2009

State of U.P.

.... Appellant

Versus

Basant Lal Dubey and others

.... Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. These appeals by special leave challenge the judgment and order dated 15.05.2009 passed by the High Court of Judicature at Allahabad in Reference No.6/2008 and in Criminal (Capital) Appeal No.3588 of

2008 acquitting the respondents accused of the charges under Sections 302 read with 34 IPC.

2. According to the case of the prosecution:-

A) One Brahmadeen Dubey owned lands in District Mirzapur in State of Uttar Pradesh. Under two sale deeds, he sold two parcels of land admeasuring 10 bighas and 6 bighas to Rama Kant Dubey and Sushil Kant Dubey respectively. Two registered deeds in this behalf were executed on 02.02.1993. However, it came to the notice that there was already a sale deed executed on 09.09.1992 in respect of very same lands in Kolkata in favour of Basant Lal Dubey and others. This led to the filing of Civil Suit No.160 of 1993 by Brahmadeen seeking cancellation of sale deed dated 09.09.1992, submitting, inter alia, that the deed in question was a sham document which was obtained by setting up an imposter in place of the owner i.e. Brahmadeen Dubey.

B) On 16.11.1994, brother-in-law of Brahmadeen named Kedar Nath Dubey was murdered while sons of Kedar Nath were also injured in the transaction. In respect of said incident, Basant Lal Dubey and his three sons Lalji, Gyan Prakash and Om Prakash were

facing trial for having caused the murder of Kedar Nath and injuries to his sons.

C) Civil Suit No.163/1993 was at an advanced stage of trial. The matter depended upon the testimony of Brahmadeen. Around this time, Brahmadeen was assaulted with lathi and dandas by Basant Lal Dubey and his sons, Lalji, Om Prakash, Gyan Prakash. In respect of said assault a separate case was registered and was also going on.

D) Brahmadeen aged about 90 years was living with the sons of Kedar Nath Dubey on whom he depended because of his old age.

E) On 26.11.1998 at about 8.00 in the morning PW1 Kamla Kant Dubey, son of Kedar Nath Dubey alongwith Brahmadeen had gone to ease out at some distance from the village. At that time Basant Lal and his sons Lalji, Om Prakash and Gyan Prakash came on a tractor driven by Om Prakash from a small road along side a Canal. Lalkara was given by Basant Lal that the old man be killed and should not be allowed to escape. The tractor swerved and was driven straight in the direction where Brahmadeen was easing out. He got up in fright but the tractor pushed him down and he was crushed. The tractor took round and came back again to crush him. PW1 who was easing out at

some distance, raised shouts which attracted the attention of villagers, whereupon the tractor escaped towards western side of the village.

3. PW1 then reached Police Station Vindhyachal, District Mirzapur with a written complaint narrating the facts about civil litigation as well as the fact that his father Kedar Nath was done to death on 16.11.1994 and that said Brahmadeen was an important witness who could have proved that the alleged sale deed executed in Kolkata was a forged document. As regards the incident it was stated as under:-

“Today dated 26.11.1998 in the morning at about 8 a.m. I and my fufa had gone to ease out at some distance from the village in the orchard situated at south direction, then suddenly from canal patri, Sri Basant Lal son of Radharaman Dubey, Lalji and Gyan Prakash and Om Prakash Dubey all sons of Basant Lal Dubey came from front side and Basant Lal said by giving Lalkara that “is budhe sale ko maro bhag na jay”, in the meantime Om Prakash having brought the tractor towards my fufa and pushed him by tractor, rolled over the same upon him by taking rounds. After felling down of my fufa with an intention to kill him and also in order to destroy the evidence again by taken may rounds of tractor crushed him due to which he died on the spot. After having eased out midway I rushed to the side of the village and on raising alarm they went back from patri of canal by taking their tractor. This incident was witnessed by me and many other persons from the village. The tractor was being driven by Om Prakash.”

4. Pursuant to this complaint, First Information Report was registered at 9.30 a.m. on 26.11.1998 and investigation was undertaken. PW6 Om Parkash Singh, SSI went to the spot and prepared spot panchnama Exh.Ka.14. He found marks of wheels of tractor which as depicted in the spot panchnama showed marks of tyres in circular or round motion. In the inquest it was found as under:

“The dead body was lying in the chak of Badri Narayan Dubey in flat position, the head as towards West, legs were facing East, right hand was on the stomach, left hand was on the earth, the mouth was open, right eye was also open, left eye is closed, left leg was straight, right leg was bent upon the ankle of the leg was on the mend of the chak-road, on the left side of the dead body there was a bamboo Danda and Lota of steel, some portion of the face of the deceased was inside the earth. The description of the dead body is that he is of fair complexion, the face is round, well built body with eye, ear and nose and the age was about 90 years. On the dead body of deceased there was a white dhoti, a banyan of brown khakhi colour, a full handed sweater of brown colour and janew of red colour, gamacha of cross border, havai chappal but on search nothing was recovered.

On making inspection of the injuries on the dead body:-

1. Towards right side the portion of head was pressed.
2. On account of head injury the parietal bone was coming out and blood was oozing

3. On account of injury on the left leg the skin of the same was torn.

4. On account of injury on right leg the skin was damaged upto knee and from adjacent to knee, skin of left leg was torn and there was swelling in the bottom of the right leg.

5. Injury on the right ear.

6. Injury on the right eye.”

5. The body of the deceased was then sent for post mortem which was undertaken by PW4 Dr. K.N. Mehrotra on 27.11.1998. The features noted in the post mortem were as under:

“In External Examination it was found that the body of the deceased was of average built. After death there was mark of contusion on back, thigh and hips. Rigor-mortis were present in both the activities memos. The head was depressed from the left side. Right eye came outside and there was swelling in the left eye. Red blood was oozing out from mouth, nose and eyes. Stomach had also swelling.

INJURIES PRIOR TO HIS DEATH:

- (1) 5cm.x2cm. lacerated wounds on right eye and right forehead. Eye ball is protruded and bursted. Skull was laterally compressed. All skull bones are protruded into pieces:
- (2) 7cm.x7cm. contusion with swelling over left eye;
- (3) 19cm.x4cm. abrasion on front side of right leg; knee and upper leg;

- (4) 9cm.x7cm. abrasion left upper leg at medial aspect 13cm. below the knee joint;
- (5) 3cm.x1cm. abrasion over posterior of right lower arm;
- (6) 5cm.x7cm. contused swelling on left chest and underlying ribs are fractured.

In Internal Examination the Doctor has found that all bones of skull were broken in pieces. Membranes and brain were busted. All bones of left chest were broken. Air pipe of nostril Tricia Kleenex and brachia were broken. Left lungs were protruded and left lung became yellowish. Both the chambers of the heart were empty. Teeth of the deceased was missing. Pancreas was empty. There was gases in small intestine and gases and waste were also found in the large intestine. Liver, spleen and both kidneys became yellow and urinary bladder was empty.”

6. Accused Gyan Prakash was arrested on 27.11.1998. Accused Basant Lal and Lalji surrendered in Court on 04.12.1998 while proceedings under Section 83 of Code of Criminal Procedure were initiated against accused Om Prakash who was later arrested. After conclusion of investigation charge sheet was filed and charges were framed against the respondents under Section 302 read with 34 IPC for having committed the murder of Brahmadeen in the manner as stated above.

7. During the trial, prosecution examined six witnesses. PW1 Kamla Kant Dubey, an eye witness reiterated his assertions made in the complaint and stated, *inter alia*, (i) about the civil litigation and that Brahmadeen had filed civil suit seeking cancellation of sale deed in favour of Basant Lal, submitting that was obtained fraudulently ; (ii) that his father Kedar Nath Dubey was murdered in respect of which said Basant Lal Dubey and his sons Lalji, Om Prakash and Gyan Prakash were facing trial; (iii) that the accused had assaulted Brahmadeen with *lathies* and *dandas* in respect of which a separate case was also going on; and (iv) regarding the present incident in question which resulted in the death of Brahmadeen.

In his testimony he also stated that as a result of his shouts other villagers including PW3 Shyam Narayan had reached the place of occurrence. In his cross examination, the assertions that there was a civil litigation initiated by Brahmadeen, that the accused were also facing charge of having caused the murder of Kedar Nath Dubey and that a separate case for having assaulted Brahmadeen was pending against them, were not challenged.

8. The prosecution also examined PW3 Shyam Narayan who stated that as a result of shouts of PW1 he had arrived at the site of occurrence and seen the accused making good their escape. Medical evidence was unfolded through PW4 Dr. K.N. Mehrotra. The Investigating Officer PW6 Om Prakash Singh, *inter alia*, stated about preparation of spot panchnama and the inquest undertaken by him. In their statements under Section 313 the accused submitted that Brahmadeen had executed a valid sale deed in their favour and denied rest of the allegations claiming themselves to be innocent. However no witness was examined in defence.

9. The trial court observed that the name of PW3 was not mentioned in the original complaint and it would be doubtful to accept him as witness who had seen the accused making good their escape. The trial court accepted that the first information report was lodged with promptitude and was well supported by the inquest and spot panchnama. It observed that the motive alleged by the prosecution was proved beyond reasonable doubt. The trial court accepted the eye witness account of PW1 and considered whether the testimony of sole witness could be relied upon. Having found corroboration to the version of the eye witness on material particulars, it accepted such

testimony and the case of the prosecution. It convicted all the accused under Section 302 read with 34 IPC. By its subsequent order, it observed that a 90 year old infirm man was done to death in a gruesome manner purely on account of greed for property and as such the case called for extreme punishment. It therefore imposed death penalty on the accused, subject to confirmation by the High Court.

10. The death sentence so imposed led to Reference No.6/2000 in the High Court. The convicted accused also preferred Criminal (Capital) Appeal No.3588/2008. The matters were considered together. The High Court found three infirmities in the version of PW 1 (a) He had attributed role of exhortation to two accused which was not so stated specifically in the first information report. (b) The trial court having refused to rely on the testimony of PW3, it left no manner of doubt that PW1 had introduced PW3 as eye witness to lend cogency to the case of prosecution. (c) He had changed the place of occurrence inasmuch as the occurrence as shown in the FIR had taken place when he and the deceased were going to Chak road whereas the situation was now improved upon by stating that he had gone for answering the call of nature.

It was also observed that the ocular account was in conflict with the medical opinion. It stated as under:

“The counsel for the appellant submits that ante mortem injuries are in conflict with ocular account. In this connection, we may advert again to the prosecution case according to which the deceased was repeatedly crushed under the wheels of the tractor. Our particular attention was drawn to injury No.1 which could be result of the crushing by the wheel of tractor but in so far as injury No.6 is concerned, it is only on the left part of chest resulting in internal damage to the ribs but had he been crushed under the tyres, then right chest should have also sustained similar injuries. By this reckoning, the medical evidence belies the prosecution case that the deceased was repeatedly crushed under the wheels of the tractor. In the circumstances the submission of the learned counsel gains ground that the deceased came under the wheel of the unidentified tractor by accident and the version of PW1 with regard to this vital fact appears to be inherently improbable and intrinsically incredible and therefore, the same cannot be accepted.”

11. The High Court thus gave benefit of doubt to the accused and allowed their appeal acquitting them of all the charges leveled against them. In the light of its discussion, Reference No.6/2008 was also rejected. These appeals by special leave filed by the informant and the State seek to challenge the correctness of the view taken by the High Court in acquitting the respondents accused.

12. Shri T.N. Singh, learned Advocate appearing for the complainant in Criminal Appeal No.1506 of 2009 and Shri Ratnakar Dash, learned Senior Advocate appearing for the State in Criminal Appeal No.2409 of 2009 submitted that the High Court erred in concluding that the medical evidence on record belied the case of prosecution that the deceased was repeatedly crushed under the wheels of the tractor. It was submitted that the alleged infirmities in the testimony of PW1 were not infirmities at all and in any case were not of the magnitude which could call for rejection of his evidence in toto, specially when the evidence regarding motive as placed by the prosecution was very strong. Mr. Manoj Prasad, learned Senior Advocate appearing for the respondents accused in both the appeals supported the view taken by the High Court. In his submission, the post mortem report did not indicate injuries by repeated crushing under the wheels of the tractor. It was further submitted that the testimony of PW1 was so intermixed with falsehood and exaggeration that it would be hazardous to rely on such testimony, more particularly, in an appeal against acquittal.

13. We have gone through the record and considered the submissions. At the outset, it must be stated that PW4 Dr. K.N.

Mehrotra, in his examination clearly stated that the injuries in question were possible because of crushing by a tractor. In the cross examination, all that was suggested was that such injuries could also be possible by a jeep or a truck. We have seen the observations in the post mortem which indicate that on internal examination it was found that all bones of the skull were broken in pieces, membrane and brain were burst and that eye ball had come out. Further, all bones on the left side of the chest were broken, left lung was protruding out. Air pipe, trachea larynx were also broken. The external examination and injuries indicated in the post mortem suggest crushing injuries. At least two areas, the left side of the skull and the left side of the chest appear to be crushed under the impact, which is consistent with ocular version. The spot panchnama Ext.Ka.14 shows tyre marks having round or circular motion which indicate that the vehicle must have been brought back and used for repeated crushing. In the face of these facts, the assessment that the medical evidence belies that the deceased was repeatedly crushed under the wheels of the tractor, is completely incorrect. Further, the area where the incident occurred is such where a vehicle would not enter by mistake causing an accident but the attempt was definitely deliberate.

14. We now proceed to consider the reasons which weighed with the High Court while discarding the evidence of the eye witness. The complaint Ext.P1 shows that PW1 and the deceased had gone at a distance from the village for easing themselves. Narrative clearly shows that it was at that stage that the tractor was driven straight towards the deceased. We do not see how there was an improvement in the version in court as against the one which finds mention in the complaint Ext.P1 or that the place of occurrence was changed. In the very same complaint PW1 had said that after the incident he had raised alarm whereupon many persons from the village had arrived at the scene of occurrence. It is true that he had not named PW3 as one of those persons in the complaint. That factor may certainly weigh while appreciating the testimony of witnesses. Similarly, if as against the role of exhortation which was attributed to only one person in the complaint, if there is subsequent improvement in the oral testimony in court, that aspect of the matter can also be taken care of while appreciating the evidence and grain could be separated from chaff. But the question is whether these two reasons are strong enough to discard the testimony of the eye witness in toto. In our view, even if there were some improvements on part of PW1, these matters are not

so fundamental affecting the very core to such an extent that his testimony needs to be discarded completely.

15. It has come on record that deceased Brahmadeen was 90 years of age and was living with the family of PW1 because of his old age. A man of such advanced age can reasonably be expected to depend upon the assistance of the inmates of the house. It would not be unnatural in such circumstances for somebody from the house to accompany the old man when he is required to answer the call of nature. The fact that Brahmadeen was done to death while he had gone to ease himself and that his body was found in such area, is clear from the record and not disputed at all. At the spot, a *lathi*, a *lota* and his *hawaai chappal* were found which again lend support. In the circumstances the presence of PW1 at the relevant time and place is quite natural.

16. The record further indicates that soon after the incident PW1 rushed to the police station and the first information report was registered in an hour and a half. The investigator rushed to the spot where spot panchnama revealed tyre marks of the tractor in circular or round motion. He also found *lathi*, *lota* and *hawaai chappal* of the

deceased next to the body. The status of the body as disclosed in the inquest also showed that it was run over by a vehicle which was later substantiated by post mortem. Consequently, we find the version coming from PW1 to be consistent, supported by all relevant circumstances and lodged with promptitude. Having found his presence to be natural and his version getting complete support on material particulars, in our considered view, the witness is completely trustworthy.

17. It is settled principle that a conviction can well be founded on the testimony of a single witness if the court finds his version to be trustworthy and corroborated by record on material particulars¹. We find on the touchstone of these principles the testimony of PW1 is completely trustworthy. Out of three infirmities found by the High Court, one regarding place of occurrence is not correct at all. So far as other two infirmities are concerned, it is well accepted principle that the first information report need not contain every single detail and every part of the case of the prosecution. However, assuming them to be improvements, in our view the basic substratum of the

¹Ramnaresh vs. State of Chhattisgarh reported in (2012) 4 SCC 257 which in turn relied upon Joseph vs. State of Kerala : (2003) 1 SCC 465 and State of Haryana vs. Inder Singh : (2002) 9 SCC 537

matter does not get affected by such improvements at all. Even after segregating the part which appears to be introduced as improvement, the testimony of PW1 is clear and creditworthy. The feature that there was strong motive for the respondents to commit the murder in question is also clear from the record and the trial court had accepted that the respondents had strong motive to commit the crime. The finding as regards motive has not even been touched by the High Court. While PW1 narrated facts regarding civil litigation, the fact that the respondents accused were being tried for the murder of his father and that there was a separate case instituted against them for having assaulted Brahmadeen, he was not countered in cross-examination. The motive therefore lends complete corroboration and assurance while appreciating the version of PW1.

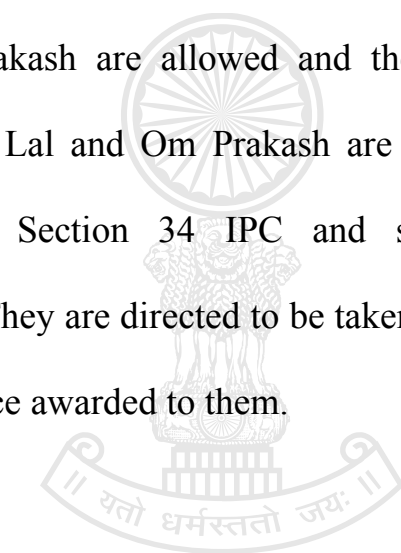
18. We are conscious that we are considering an appeal against acquittal and that going by the law laid down by this Court, the view taken by the High Court ought not to be interfered with if it is a possible view. However, in our considered opinion, the view which weighed with the High Court cannot be termed as a possible view in the matter. It is well settled that in such circumstances it is open to an

appellate court to consider the matter afresh². Having undertaken such exercise, we are of definite conclusion that PW1 is a natural witness whose presence at the time and place of incident is established and is worthy of acceptance. However, mindful of the fact that in the original reporting he had attributed lalkara to respondent Basant Lal alone while the tractor was being driven by respondent Om Prakash, which meant that the other two accused, though sitting on the tractor were not attributed any overt act, we grant benefit of doubt to the other two accused, namely, Lalji and Gyan Prakash. It could possibly be put that Brahmadeen, an old man of 90 years would normally be accompanied by someone for assistance but would be unaccompanied while easing out and therefore the time and place was so deliberately chosen, in which case culpability of every occupant of the tractor would be made out. However, in the absence of any material establishing that, Lalji and Gyan Prakash are entitled to benefit of doubt.

19. We therefore set aside the acquittal of Basant Lal and Om Prakash and restore the order of conviction as recorded against them by the trial court for the offences punishable under Section 302 read

² Ramesh Babulal Doshi vs. State of Gujarat : (1996) 9 SCC 225

with 34 IPC. However, we do not deem it appropriate to restore the sentence of death. In our view, the appropriate sentence in the matter ought to be sentence for imprisonment for life, which we proceed to impose on said Basant Lal and Om Prakash. Consequently, the appeals are partly allowed. The acquittal of Lalji and Gyan Prakash as recorded by the High Court is affirmed. The appeals as regards Basant Lal and Om Prakash are allowed and their acquittal is set aside. Accused Basant Lal and Om Prakash are convicted under Sections 302 read with Section 34 IPC and sentenced to suffer life imprisonment. They are directed to be taken into custody forthwith to suffer the sentence awarded to them.



.....J.
(Pinaki Chandra Ghose)

.....J.

.....
(Uday Umesh Lalit)

New Delhi,
July 01, 2015