

CASE NO.:
Appeal (crl.) 808 of 2000
Appeal (crl.) 809 of 2000

PETITIONER:
KOMAL AND OTHERS, MEHARBAN AND OTHERS

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT: 23/08/2002

BENCH:
U.C.BANERJEE & B.N.AGRAWAL.

JUDGMENT:

Meharban and others
Vs.
State of Uttar Pradesh

B.N.AGRAWAL, J.

Appellants in these two appeals, who are in all eleven in number, along with thirty three other accused persons were convicted by the trial court under Sections 302/149 and 323/149 of the Penal Code and each one of them was sentenced to undergo imprisonment for life and rigorous imprisonment for a period of one year respectively. Appellants of Criminal Appeal No. 808 of 2000 besides other twenty five accused persons were further convicted under Section 147 of the Penal Code and each one of them was sentenced to undergo rigorous imprisonment for a period of one year. Appellants of Criminal Appeal No. 809 of 2000 were also convicted under Section 148 of the Penal Code along with seven other accused persons and each one of them was sentenced to undergo rigorous imprisonment for a period of three years. The sentences, however, were ordered to run concurrently. On appeal being preferred by all the forty four accused persons, including the appellants, convictions and sentences of the appellants have been confirmed by the High Court whereas appeal of five accused persons had abated as they died during its pendency. Appeal preferred by the other five accused persons was allowed in part and while confirming their convictions, the sentences awarded against them have been set aside on the ground that they were juvenile. One Darbari has been acquitted by the High Court as his plea of alibi found favour with it. The other accused persons have been acquitted as the prosecution failed to prove their participation in the crime beyond reasonable doubt.

Prosecution case, in short, was that on 4th May, 1976 the two deceased Umrao and Juggey, who were residents of village Bamhauri, after taking their breakfast had gone to Madawara market. At about 12.00 or 12.30 p.m. they came back from there by a bus and were sitting in their Khalliyan underneath a neem tree. Gajraj (PW.4), Gulab Rani (PW.2) (wife of Umrao) and Kirat (PW.5) were also present in the vicinity. PW.5 thereafter had taken his cattle to the village pond. PW.2 and her son-PW.4 went to drink water in the hutment of one Gore Lal. When she was drinking water, Umrao's daughter-Phulbai came there and informed her mother-PW.2 that a large number of persons had assembled in the baithaka (an assembly hall) of one Modley, were holding guns, lathis, axes and ballams etc. and saying that "Umrao and Juggey had come, let us kill them".

Hearing this, PW.4 and PW.2 came out of the hut and saw the accused persons coming towards them from three sides. Ratan, resident of village Ratanpur, was standing on the road leading to the school, Ratan Modley stood on the road leading to Chittar, both holding guns, and blocked the passage. Ratan Modley was exhorting other accused. In all, forty four accused persons came there, out of whom, appellants Nathu, Meharban, Bhagirath, Girdhari and accused Gopi, Bahadur and Babu, in all seven, were armed with axes, appellant Dayaram and accused Darbari and Vijay with ballams, accused Ratan, resident of village Ratanpur, and Ratan Modley with guns and other thirty two accused including the other appellants with lathis. All of them started assaulting Umrao and Juggey with axes, lathis and ballams underneath the neem tree. When PW.2, PW.4 and Gore Lal tried to save them, they were also assaulted by some of the accused persons. PW.4 was assaulted by accused Sukh Singh, Jawahar, Ratan, resident of Madawara, and appellants Uttam and Girdhari with lathis. PW.2 was assaulted by appellant Uttam and accused Bahadur with lathi and axe respectively. In the midst of assault, Umrao somehow managed to escape towards the village. He was chased and thrown on the ground by appellants Meharban, Bhagirath, Dhan Prasad and Sura besides accused Gopi and Ganiya and assaulted by them with axes and lathis. In the course of the assault, witnesses Mulchandra, Nathu, Panchey, Lakshman, Rammu and Khuman came to the place of occurrence and intervened. Lakshman asked the assailants, "you had already finished two persons, will you kill the whole family", whereupon the assailants ran towards the village. While running away accused Bahadur turned back and struck a blow of axe on the head of Juggey and thereafter they fled away. During the occurrence, two persons, namely, Umrao and Juggey lost their lives and two members of their family viz., PW.2 and PW.4 besides one Gore Lal sustained injuries. Stating these facts, First Information Report of this incident was lodged by PW.5 at Police Station Madawara at 2.35 p.m. in which forty four accused persons, including the appellants, were named.

The police after registering the case took up investigation and on completion thereof submitted charge sheet, on receipt whereof, the learned Magistrate took cognizance and committed the aforesaid forty four accused persons, including the appellants, to the Court of Sessions to face trial.

Defence of the accused persons was that they were innocent and falsely implicated on account of animosity. According to them, no occurrence much less the occurrence alleged had taken place and the deceased persons might have received injuries in the dead of night when nobody had witnessed the occurrence and in the morning when the dead bodies were found, First Information Report was lodged after due deliberation at 2.35 p.m. after roping in the accused persons, including the appellants, who were sworn enemies of members of the prosecution party. Accused Darbari had taken a plea of alibi.

During trial the prosecution examined 13 witnesses in all, out of whom, PW.5 was the informant, who claimed to be an eyewitness and PW.2 and PW.4 were the injured eyewitnesses. Dr. O.P.Chadha (PW 1) was the Doctor who is said to have examined the injured witnesses. Dr. D.R.Prabhakar (PW 6) was another Doctor who held postmortem examination on dead bodies of the two deceased and Shri Ranvir Singh (PW 11) was the Investigating Officer whereas other witnesses were formal in nature. Upon conclusion of trial, the learned Additional Sessions Judge convicted the accused persons, including the appellants, as stated above. On appeal being preferred, convictions and sentences of the appellants have been confirmed whereas appeals preferred by other accused persons have been disposed of as stated above. Hence, these appeals by special leave.

Before proceeding to consider submissions made on behalf of parties, it may be useful to refer to certain facts which are undisputed. The occurrence is said to have taken place at about 1.30 p.m. and the First Information Report was lodged very promptly at the police station at 2.35 p.m., i.e., only after an hour of the occurrence, although distance of the police station from the place of occurrence was four kilometers. In the present case, place of occurrence cannot be doubted as the Investigating Officer had recovered blood stained earth therefrom. Nothing could be pointed out to show that the occurrence had taken

place at some other place. Five persons had received injuries, out of whom, two had succumbed to the same. From amongst the two deceased, Umrao had received 17 injuries, out of which some of the injuries were incised wounds. All the injuries by sharp edged weapon were on the forehead, right, left and on the back of the head behind midline right ear. Apart from these injuries by sharp edged weapon, he had also sustained two injuries by hard and blunt weapon on the head. The other two incised wounds were on his legs and the same were bone deep. Rest of the injuries on the person of the victim were abrasions on thigh, knee, legs and on the back of outer and inner left leg. The number of abrasions upon the person of deceased Umrao further go a long way to corroborate the prosecution case that when during the course of assault, he wanted to run towards the village, he was thrown down on the ground and assaulted by the appellants in front of beda of Gulzari and killed by lathis and axes. An examination of incised wounds clearly reveals that this deceased had sustained one incised wound 1" x " x bone deep on the left side of midline of the forehead and the second incised wound on the head at the right ear region. The direction is the same. The third incised wound is also on right side of the forehead direction from behind forward. The two lacerated wounds are on right side of the head. Another deceased Juggey had sustained as many as eight injuries. Out of them injury Nos. 1,2,6,7 and 8 were incised wounds varying in dimension. Injury No.1 was in the size of 1-5/8 x 1" bone deep on the left forehead, above outer end of left eye brow underlying bone fractured. Injury No.2 was of the dimension of 2" x 1/6" x bone deep on the right side of head 4" behind right ear. Injury No. 6 was punctured wound in the size of 3/8" x 1/8" x " on the back and inner side of left wrist. Injury No. 7 was also another incised wound 5/8" x 1/6" x muscle deep outer side of left leg. In the opinion of the doctor, injury Nos. 6, 7 and 8 were caused with ballam whereas injury Nos. 1 and 2 axes. Underneath injury No.1 comminuted fracture was found. The Doctor stated in his cross-examination that out of injuries sustained by deceased Juggey, six were on the left side. He further stated that all the incised wounds sustained by Juggey were going upwards and two punctured wounds of Juggey were on the non-vital parts. Apart from the two deceased persons, three other persons, namely, Gulab Rani (PW 2), Gajraj (PW 4) and Gore Lal had also received injuries and out of them injured PW.2 had received four injuries, some on vital parts like head and others on left scapular region and right arm. One of the injuries was caused by sharp edged weapon and others by hard and blunt weapon. The other injured PW.4 received as many as 18 injuries on different parts of his body. The third injured Gore Lal is said to have received one injury on the chest. These three injured were examined by Dr. O.P.Chaddha (PW 1) in whose evidence, there is nothing to suggest that the injuries would have been self inflicted inasmuch as otherwise also in view of the nature of injuries especially when the same are on vital parts of the body as well, the factum that these persons had received injuries cannot be doubted.

In the background of the aforesaid facts, we now proceed to consider the contentions raised in support of these appeals by Shri U.R.Lalit, learned Senior Counsel appearing on behalf of the appellants. Firstly, it has been contended that the medical evidence does not fit in with the prosecution case as PW.2 stated that all the accused persons assaulted the two deceased but the total injuries received by them were only 25. It may be stated that according to the medical evidence, 17 injuries were found on one of the deceased and eight on the other. So far as the three injured persons are concerned, one of them had received 18 injuries, another four and the third one injury. Thus, the total number of injuries sustained by the deceased comes to 25 and that apart, the injured persons had received 23 injuries, total being 48 in number. If the evidence of this witness is read in its entirety, it becomes clear that according to her evidence, the accused persons inflicted injuries not only upon the two deceased persons but also upon the three injured. The total number of accused persons was forty four and the number of injuries found on the two deceased and three injured were forty eight which go to show that the medical evidence fits in with the prosecution case disclosed in the First Information Report as well as evidence of the witnesses. Dr. D.R.Prabhakar (PW 6) who held postmortem examination on the dead bodies of the two victims on the date of occurrence itself at 8.35 p.m. stated in his examination-in-chief that the death might have been caused on the same day at about 1.30 p.m. During cross-examination, when question was put with regard to

time of death, he stated that there may be variation therein by 12 hours on either side. On the basis of this, it has been contended on behalf of the appellants that the deceased might have received injury in the dead of night in some other manner of occurrence and in the morning when the dead bodies were found, First Information Report was lodged after due deliberation at 2.35 p.m. by roping in the accused persons who are sworn enemies of members of the prosecution party. We find difficulty in accepting the contention as in the examination-in-chief, doctor has specifically given the time of death as 1.30 p.m. The fact that in the cross-examination, he has stated that there may be twelve hours variation in the time of occurrence on either side would not necessarily mean that the occurrence had taken place in the dead of night. Moreover, the three injured persons had received injuries, namely, Gulab Rani (PW 2), Gajraj (PW 4) and one Gore Lal and number of injuries found by the doctor upon their persons are in all 23. These persons had received multiple injuries by sharp edged and lethal weapons and on vital parts of the body as well. Neither from the evidence of doctor, it appears that their injuries could be self inflicted nor there is any other circumstance to draw such an inference. The inflicting of injuries upon these three persons fits in with the time of occurrence disclosed in the First Information Report as well as the evidence and the same do not fit in with the hypothesis that occurrence might have taken place in the dead of night, especially when there is no circumstance whatsoever warranting such an inference. Thus, we do not find any substance in this contention.

Learned counsel then contended that in view of the fact that the High Court has accepted the plea of alibi of accused Darbari and acquitted him and complicity of twenty other accused persons has been doubted, the prosecution case in relation to involvement of the appellants with the crime becomes highly doubtful. In our view, merely because benefit of doubt has been given in relation to some of the accused persons, the same ipso facto cannot in any manner affect the prosecution case against the appellants especially when evidence against them has been found to be credible.

Further contention is that PWs 2 and 4 who claimed to be the injured eyewitnesses have supported the prosecution case by giving parrot like version in their evidence. In our view, these two witnesses have supported the prosecution case in all material particulars and they have made statements which are consistent with the First Information Report and nothing could be pointed out to discredit their evidence. Their testimony cannot be thrown away merely because they are close relatives of the victims more so when they are quite natural witnesses and their evidence fits in with the objective finding of the Investigating Officer as well as medical evidence.

It has been pointed out by learned counsel for the appellants that the High Court having doubted that the informant PW.5 was an eyewitness, ought not to have placed reliance upon his evidence to the effect that he had seen the accused persons fleeing away immediately after the occurrence and promptly lodged the First Information Report. In our view, even if he had only seen the accused persons fleeing away immediately after the occurrence, the same can be used to corroborate the testimonies of PWs. 2 and 4 who were the injured eyewitnesses.

Learned counsel next contended that though, according to the statements of witnesses, some villagers had arrived at the place of occurrence when the members of prosecution party were being assaulted and they intervened in the matter, none of them has been examined in the case on hand. In our view, non-examination of these witnesses by itself would not affect the veracity of the prosecution case when the evidence of PWs 2 and 4, the two injured eyewitnesses who had received multiple injuries, have been found to be trustworthy and their evidence is corroborated by the informant-PW.5 and supported by medical evidence as well as objective finding of the Investigating Officer.

It has been also contended that Phulbai who gave information to PWs. 2 and 4 that accused persons armed with deadly weapons had assembled in the baithaka of one Modley and planning there to kill the two deceased persons, was

not examined. It appears that the occurrence had taken place under a neem tree where accused persons came from the baithaka of Modley. The fact that the accused persons had collected in the baithaka of one Modley and were planning there to murder the two deceased persons having not been proved by non-examination of Phulbai, the same cannot in any way affect the manner of occurrence under the neem tree where the accused persons are said to have arrived and assaulted the two deceased persons and the three injured persons inflicting as many as 48 injuries in all.

Learned counsel lastly contended that according to the prosecution case, two accused persons were armed with guns, but they did not use the same which appears to be highly improbable. In our view, the complicity of two accused persons who were armed with guns having been doubted by the High Court itself, they have already been acquitted which cannot in any manner affect the prosecution case so far as the appellants are concerned against whom the witnesses have consistently deposed and their evidence has been found to be credible.

In view of the foregoing discussion, in our considered opinion, the prosecution has proved its case against the appellants beyond reasonable doubt and we do not find that the High Court has committed any error in upholding their convictions and sentences so as to justify any interference by this Court.

In the result, the appeals fail and the same are dismissed.