

CASE NO.:
Appeal (crl.) 1863-64 of 1996

PETITIONER:
State of Uttar Pradesh

RESPONDENT:
Farid Khan & Ors.

DATE OF JUDGMENT: 23/09/2004

BENCH:
K.G. Balakrishnan & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

K.G. BALAKRISHNAN, J.

These appeals are preferred by the State of Uttar Pradesh assailing the acquittal of the three respondents accused of the offences charged against them under Section 302 read with Section 34 IPC. The respondents-accused were found guilty by the Sessions Court, Rampur, for offences punishable under Section 302 read with Section 34 IPC for having caused the death of one Khurshid Mian.

The incident giving rise to the present appeals happened on 2.8.1978 at about 5.45 P.M. in Mohalla Mazar Tat. On the date of occurrence, Achhey Mian, brother of deceased Khurshid Mian, who lived in Mohalla Nalapar, visited his brother Khurshid Mian. Their father, Banney Mian, had died 28 days prior to the date of occurrence and Achhey Mian visited his brother Khurshid Mian to discuss about the arrangements for the Chaalisvan [the fortieth day ceremony] of their late father. Achhey Mian found the house of his brother locked. There, he met Wajid Khan, who told him that Khurshid Mian had gone to the mosque for offering prayer. Achhey Mian; witness Wajid Khan; and one Alla Rakha stood in front of a shop and were exchanging pleasantries. They saw the three accused persons coming there and asked Wajid Khan whether he had seen Khurshid Mian. In the meantime, Khurshid Mian was also seen coming from the western side. The accused persons surrounded Khurshid Mian and immediately started attacking him with knives. Accused Saghir pierced the chest of the deceased and accused Mamoo and Farid Khan gave knife blows on the back and legs of the deceased. The deceased was repeatedly stabbed by the assailants and thereafter they ran away from the place of incident. The deceased fell on the ground and died on the spot. Two other persons, namely, Sharif and Salim Khan who were also coming behind the deceased arrived at the scene. Achhey Mian, the brother of the deceased, went to the Ganj Police Station and gave the Exh. K-1 report. The motive of the crime is stated to be that Banney Mian, the father of Khurshid Mian and Achhey Mian had rented out certain shops in Mohalla Mazar Tat to one Zakkan Khan and his children. They committed default in paying arrears and, therefore, Banney Mian filed a suit for recovery of arrears of the rent and in the execution of the decree obtained by him, the house of the accused was attached for court sale. The accused persons thus bore a grudge against Banney Mian and his family members.

Investigation of the case was taken over by PW-6, who prepared the inquest report. Post-mortem examination on the dead body of the deceased was conducted by PW-4. There were five incised injuries and the doctor was of the view that the death of the deceased had taken place due to shock and hemorrhage resulting from the incised injuries found on the chest of the deceased. The accused persons pleaded not guilty and they alleged false implication. The accused persons contended that the witnesses spoke falsehood and that they had not seen any incident. They alleged that Achhey Mian, in collusion with the police, implicated the accused as he was inimically disposed towards them.

On the side of the prosecution, six witnesses were examined. PW-2 Sharif and

PW-3 Salim Khan were the eye witnesses to the occurrence. The Sessions Court believed the evidence of PW-2 and PW-3. PW-2 Sharif deposed that the incident happened at about 5.45 P.M. and he saw accused, Saghir, Mamoo and Farid Khan coming from the western side. He stated that he heard accused Saghir shouting and thereafter striking a blow of knife on the chest of the deceased. He also saw Mamoo and Farid Khan stabbing the deceased with knives. He saw Khurshid Mian falling on the ground with injuries and the accused persons running towards south. He was extensively cross examined by the counsel for the accused. He stated that he was a "Beedi" roller by profession and on the day of occurrence he was going to meet Safi to collect his wages. He also stated that he saw PW-3 Salim Khan coming from the western side. Both of them walked together and deceased Khurshid Mian was walking twenty five paces ahead of them. This witness saw the accused surrounding deceased, Khurshid Mian and causing knife injuries to him. The learned Sessions Judge relied on the evidence of this witness. However, the High Court disbelieved his evidence on two counts -- firstly on the ground that he was previously convicted in a criminal case and was sentenced four years' imprisonment. This, according to the High Court, was a valid ground to discard his evidence. Another ground to disbelieve the evidence of PW-2 Sharif was that he must have been a chance witness and his explanation that he was going to the shop of Safi may not have been true as there were several other "Beedi" manufacturers in that locality nearest to his house. Of course, the evidence of a witness, who has got a criminal background, is to be viewed with caution. But if such an evidence gets sufficient corroboration from the evidence of other witnesses, there is nothing wrong in accepting such evidence. Whether this witness was really an eye witness or not is the crucial question. If his presence could not be doubted and if he deposed that he had seen the incident, the court shall not feel shy of accepting his evidence. The High Court must have kept in mind that the Sessions Court, which had the opportunity to see the witness, relied on the evidence of such a witness and such an evidence should not have been lightly discarded on these grounds.

The next independent witness was PW-3, Salim Khan. He deposed that on the day of occurrence at about 5.45 P.M., he met PW-2 and both of them were walking along the road passing through the graveyard. Khurshid Mian was also found going ahead of them. Then the witness heard a sound and saw the accused surrounding the deceased and attacking him with knives. The injured fell down right there in the graveyard and the accused ran away from that place. The Sessions Court relied on the evidence of this witness, but the High Court disbelieved the evidence of this witness as he was a resident of a different Mohalla which was about two to two and a half miles away from the place of incident. This witness was also disbelieved on the ground that in his Mohalla, there were five hundred other Beedi shops and this witness had no business to come to Mohalla Mazar Tat where the occurrence took place. The reasons given by the High Court are not tenable and can not be accepted. In order to earn their livelihood, people go to different places depending upon their choices and preferences. On the sole ground that the witness in question belonged to a different area and had no business to be near the place of occurrence, his evidence should not have been disbelieved.

Achhey Mian, the brother of deceased Khurshid Mian was examined as PW-1. He is also an eye witness. He deposed that on the date of occurrence he had come to visit his brother and was standing near the pathway leading to the graveyard and the visibility was about 150 yards. He saw the accused coming and stabbing his brother Khurshid Mian, who was killed on the spot. He deposed that PW-2 Sharif and PW-3 Salim Khan and one Wajid Khan were present at the time of incident. He remained there for about fifteen minutes and then left the dead body of his deceased brother, Khurshid Mian, under the supervision of these witnesses and went to the Police Station and gave the F.I. Statement. We do not find any reason to disbelieve the evidence of this witness. The Sessions Court rightly placed reliance on the evidence of this witness.

The High Court gave a very strange reason to disbelieve the prosecution case and held that witness Achhey Mian could not have been present at the place of incident on the date of the occurrence. PW-1 Achhey Mian in his evidence deposed that his brother Khurshid Mian wanted to have discussions with him in connection with the arrangements for the "Chaalisvan" of their father. Strangely enough, the High Court relied on a document produced by the accused persons before the High Court, to show that Banney Mian, the father of the deceased Khurshid Mian died on 10.5.1978 and the

same was reported to the Municipal Board on 12.5.1978. The document is purported to be an extract from the Birth & Death Register maintained by the Municipal Board, Rampur, and on this basis the High Court was of the view that Banney Mian died on 10.5.1978 and therefore, PW-1 Achhey Mian could not have visited his brother deceased Khurshid Mian on 2.8.1978 in connection with the arrangements of "Chaalisvan" ceremony of their father, as the fortieth day would fall on 23.6.1978 going by the entry in the Municipal Board Birth & Death Register. It is important to note that when Achhey Mian was examined as PW-1, the accused persons did not produce any document to discredit his testimony. At the appellate stage, the accused produced the document in question. PW-1 did not get any opportunity to explain that document. If the accused wanted to disprove the statement made by the said witness, they should have produced the document then and there to contradict the witness. The High Court should not have allowed this document to come on record at the appellate stage. If the High Court was of the view that it was a relevant document, the matter could have been remitted to the Sessions Court for giving an opportunity to the witness to explain. Moreover, the document by itself is an irrelevant document and the High Court could not have placed reliance on that document to hold that PW-1 Achhey Mian did not meet his brother deceased Khurshid Mian on the day of occurrence nor could have any conversation with the deceased. PW-1 saw the deceased at the place of incident. He saw the accused surrounding and attacking the deceased and stabbing him to death. PW-1 had come to visit his deceased brother, Khurshid Mian, to enquire about the arrangements in connection with the "Challisvan" ceremony of their father and has stated so in his deposition. Even otherwise, there is nothing unnatural or improbable in a person visiting his brother residing two to two and a half miles away in a different locality. The High Court seriously erred in placing reliance on a document which was not produced before the Sessions Court, but was for the first time produced before the High Court, and in holding that the prosecution case was completely false on account of this evidence.

All the three respondents were found guilty by the Sessions Court for the offence of murder punishable under Section 302 read with Section 34. The evidence of the three eye-witnesses proves that A-1 Saghir s/o Zakkan Khan stabbed on the chest of the deceased whereas A-2 Amir Ahmad and A-3 Farid Khan caused injuries on the back and legs of the deceased. The post-mortem report shows that the deceased Khurshid Mian sustained two injuries on the chest whereas the injuries on the right thigh above knee joint and the inner aspect of right ankle were very small in nature and these injuries must have been caused by A-2 Amir Ahmad and A-3 Farid Khan.

Having regard to the nature of the involvement of A-2 Amir Ahmad and A-3 Farid Khan, it is difficult to believe that they shared a common intention to cause the death of Khurshid Mian. If at all, they committed an offence punishable only under Section 324 read with Section 34. Conviction of the A-2 and A-3 for the offence of murder under Section 302 read with Section 34 IPC is set aside. After conviction by the Sessions Court and earlier as under-trials, these accused had been in jail for some period. The imprisonment undergone by them would be sufficient to meet the ends of justice for the offence under Section 324 read with Section 34 IPC.

In the result, we reverse the findings of the High Court and find that A-1 Saghir is guilty of the offence punishable under Section 302 IPC and accordingly sentence him to undergo imprisonment for life. The Sessions Judge is directed to take urgent steps to apprehend the accused to serve out the remaining part of the sentence of imprisonment for life.

The appeals shall stand disposed of accordingly.