

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 60 OF 2002

STATE OF U.P.

Appellant (s)

VERSUS

CHANDRAPAL & ANR.
(With appln(s) for bail)

Respondent(s)

Date: 22/10/2008 This Appeal was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE C.K. THAKKER
HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. S.K. Dwivedi, AAG, State of UP
Mr. S.N. Pandey, Adv.
Mr. Chandra Prakash Pandey, Adv.

For Respondent(s)

Mr. B.B. Singh, Adv.

UPON hearing counsel the Court made the following
ORDER

The criminal appeal is dismissed in terms of the signed order.

(Sarita Purohit)
Sr.P.A.(Shashi Bala Vij)
Court Master

[Signed reportable judgment is placed on the file]

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 60 OF 2002

State of U.P.

..... Appellant

VERSUS

Chandrapal & Anr.

..... Respondents

JUDGMENT

DR.ARIJIT PASAYAT, J.

1. Heard learned counsel for the parties.

2. Challenge in this appeal is to the judgment of the Division Bench of the Allahabad High Court directing acquittal of two respondents - Chandra Pal, son of Jagannath and Jagannath, son of Gajju, who faced trial for alleged commission of offence punishable under Section 302 of the Indian Penal

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Code, 1860 (in short 'IPC') so far as Respondent No.1-Chandra Pal is concerned, and Section 302 read with Section 34 IPC so far as Respondent No.2 is concerned. It is to be noted that Respondent No.2-Jagannath died during the pendency of the appeal and, therefore, the appeal has abated so far as he is concerned.

3. The prosecution story in brief is that the deceased of this case was Bodhi. He was instrumental in getting Siyapati daughter of his maternal uncle married to accused Chandra Pal. However, accused persons were not satisfied with the dowry given in the marriage and therefore, they were treating Siyapati with cruelty and ultimately turned her out of the house. Deceased Bodhi took up the cause of Siyapati and he convened a panchayat on her behalf. The panchayat was held in the morning of 3.7.1979 and it was decided therein that accused Chandra Pal should maintain Siyapati and keep her with him and he will also pay Rs.2500/- to her. A joint affidavit of Siyapati and Chandra Pal on a five rupee stamp paper Ext.Ka.6 was also executed. Both the accused persons felt highly aggrieved on account of the action taken by the deceased Bodhi

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and they considered him to be their thorn. Therefore, with a view to eliminate him, both the accused persons came to village Mardariyapur in the night between 3 rd and 4th July, 1979. At that time the deceased was sleeping underneath his Chhapper. Appellant Chandra Pal was armed with a country made pistol while Jagannath was having a "Karauli", a sharp cutting weapon. Accused Chandra Pal fired at Bodhi

which struck him and he fell down on the ground from the cot, on which he was sleeping. As soon as Bodhi tried to get up. Chandra Pal accused fired another shot at him which also struck him and he fell down on the ground and died instantaneously. Gaya Deen-P.W.1 husband of younger daughter of Bodhi was also sleeping at a little distance at the same place while Indra Pal P.W.6, a child aged about 11-12 years was also sleeping along with Gaya Deen on the same cot, as he used to sleep daily along with the deceased Bodhi. These persons witnessed the incident so also Jodhi, P.W.-2, brother of deceased Bodhi. When Jodhi advanced to the rescue of Bodhi he was given two blows of "Karauli" by appellant Jagannath, one on abdomen and other on chest whereby he also sustained injuries. On the alarm raised by injured and other witnesses, Smt. Dhirajya as well as Smt. Sia Dulari wife

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of Gaya Deen, Jiya Lal, (P.W.5) and Hori Lal were attracted to the scene of occurrence, but before their arrival assailants took to their heels. Assailants were identified in the light of burning lantern as well as in the flash light of torch. Gaya Deen-P.W.1 did not report the matter to police for whole of the night. However in the morning he reached police station Ghazipur at 8.00 A.M. and dictated oral report Ext. Ka.1. Case was registered and investigation was taken up. The investigating officer reached the place of occurrence, held inquest, collected blood stained earth and plain earth and prepared site plan Ext.Ka.17. He also found an empty cartridge and a "tikli" at the scene of occurrence which he took into his custody through memo Ext.Ka. 12. Torches of Hori Lal and Jiya Lal were also examined. The complainant also produced the lantern which was said to be burning at the time of incident and the same was found to be in working order. The lantern then was given back in the custody of Smt. Dhirajya wife of the deceased through a memo. Accused Jagannath was arrested on 6.7.1979 in presence of witnesses and said accused stated before the investigating officer that he could get recovered

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the "karauli" with which he had caused injuries to Jodhi and thereafter the said

accused led the police party to the field of Ram Swaroop and then took out "karauli" by digging out the southern-western corner of the field. "Karauli" was kept in a sealed bundle and is alleged to have been sent to chemical examiner, but no report of chemical examiner was placed on record of the trial court by the prosecution. On conclusion of investigation both the appellants were charge sheeted.

4. Since the accused persons denied the accusations, they faced the trial, in order to establish the accusation, 10 witnesses were examined. Gaya Deen-P.W.-1, Jodhi-P.W.-2 and Indra Pal-P.W.6 were stated to be the eye-witnesses to the occurrence. The trial court placed reliance on their evidence and found the accused persons guilty. The judgment of the trial court was questioned in appeal before the High Court. Accepting the stand of the accused persons that the prosecution has not been able to establish the accusations, more particularly, when the evidence of the so called eye-witnesses were not cogent, credible and reliable, the High Court directed acquittal, as noted above.

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5. In support of the appeal, learned counsel for the appellant submitted that the High Court's conclusions that the medical evidence was at variance with the ocular evidence, is not factually correct. It was also submitted that there was nothing to show that the First Information Report (for short 'FIR') was not lodged at the time claimed and/or that there were manipulations therein.

6. Learned counsel for the respondents, on the other hand, supported the judgment of the High Court.

7. We find that the High Court has, with reference to the injuries found on P.W.-2 and the post-mortem report, concluded that the medical evidence was in serious conflict with oral evidence and the possibility of there being more than two assailants and use of several kinds of weapons cannot be ruled out. Additionally, it was noticed by the High Court that the FIR appeared to be a suspicious document. In the report, initially the name of Smt. Dhirajya, wife of Bodhi, was stated to be the informant but later on the name of Gaya Deen was added. The time of starting of inquest proceeding, as disclosed in the Panchayatnama and time of completion of

inquest are in different inks. No time of lodging the FIR is

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mentioned and in the inquest report the time appeared to have been over-written in different inks. Further, Gaya Deen-P.W.-1 claimed to have been examined by Dr. J.S. Rai at 6.00 a.m. and he was brought by constable of Kotwali Police Station and not of Ghazipur Police Station. The High Court, from the aforesaid facts, concluded that the first informant had left the police station much prior to 6.00 a.m. The report was claimed to have been written at 8.00 a.m. The High Court was, therefore, of the view that the possibility of consultation and manipulation cannot be ruled out. The discrepancies in the inquest report, the non-mentioning of the time of FIR and entries made in different inks certainly raise a doubt about the authenticity of the document. Additionally, the injured witness was examined by Dr. J.S. Rai at 6.00 a.m. and appears to have been brought by Constable of Kotwali Police Station and not by Ghazipur Police Station.

8. Learned counsel for the appellant submitted that there is some discrepancy in the evidence relating to the constable of police who had taken the deceased to be examined by Dr. J.S. Rai at 6.00 a.m. Even if that be so, the factors which

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weighed when the High Court concluded that there were many manipulations and a new story was concocted, cannot be said to be a finding without any rational basis. This being the position, we are not inclined to interfere with the impugned judgment of the High Court.

9. The appeal is, therefore, dismissed.

.....J.
[DR. ARIJIT PASAYAT]

.....J.
[C.K. THAKKER]

.....J.
[LOKESHWAR SINGH PANTA]

NEW DELHI
October 22, 2008.