

CASE NO.:
Appeal (crl.) 165 of 2003

PETITIONER:
Munney @ Rahat Jan Khan

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 03/08/2006

BENCH:
G.P. Mathur & R.V. Raveendran

JUDGMENT:
J U D G M E N T
G. P. MATHUR, J.

This appeal, by special leave, has been filed against the judgment and order dated 23.11.2001 of High Court of Judicature at Allahabad by which the appeal filed by the appellant against his conviction under Section 302 read with Section 34 IPC and sentence of imprisonment for life imposed by learned First Additional Sessions Judge was dismissed and his conviction and sentence was affirmed.

2. Two persons, namely, the appellant Munney @ Rahat Jan Khan and Sarwar were tried for offences under Sections 302 and 307 both read with Section 34 IPC for having committed the murder of Iqbal Farooq Ahmad and for having attempted to commit murder of Abrar Ahmad @ Raju when Sarwar fired upon him by country made pistol. According to the case of the prosecution, the deceased Iqbal Farooq Ahmad was working as Reader in District Court at Rampur. His father Abdul Gaffar Querreshi, who had retired from the post of Munsarim in the District Court, had purchased a house in Mohalla Guiyan Talab in the city of Rampur in which Sakhawat accused was a tenant. A suit for arrears of rent and eviction was filed by Abdul Gaffar Querreshi which was decreed and in execution of the decree Sakhawat was evicted from the house on 16.10.1978 and some of his moveable properties were attached. After attachment moveable properties were kept in the same house and it was locked and they were given in the custody of PW-1 Mohammad Zaman Khan. According to the case of the prosecution PW-1 Mohammad Zaman Khan, PW-2 Abrar Ahmad @ Raju (younger brother of the deceased), PW-3 Fasih Uddin and Abdul Gaffar Querreshi came to see the house in the morning of 11.11.1978. At about 8.45 a.m. accused Sakhawat, Sarwar and Munney @ Rahat Jan Khan (appellant) came to the house and immediately Sakhawat said that he was evicted and was thrown out of the house as Iqbal Farooq Ahmed was working as Reader in the District Court and, therefore, he should be finished. All the three accused surrounded Iqbal Farooq Ahmad (deceased) and Sakhawat gave a blow in his abdomen by a big dagger. After receiving the injury the deceased fell down and thereafter Munney @ Rahat Jan Khan (appellant) and Sarwar also assaulted him by daggers. PW-2 Abrar Ahmad @ Raju tried to save his brother but Sakhawat instigated Sarwar to shoot him on which the latter took out his country made pistol and fired. However, as Abrar Ahmad @ Raju managed to enter inside the room, the gun shots did not hit him but hit the wall. Thereafter the accused ran away. An FIR of the incident was lodged by PW-1 Mohammad Zaman Khan at 9.10 a.m. on 11.11.1978 at P.S. Ganj, which is half a mile from the place of occurrence.

4. The police, after usual investigation, submitted charge sheet against the appellant Munney @ Rahat Jan Khan and Sarwar accused. Sakhawat accused could not be arrested as he absconded and,

therefore, he was not sent for trial. After commitment of the case the learned First Additional Sessions Judge framed charges under Sections 302 and 307 both read with Section 34 IPC against both the accused. In order to establish the case prosecution mainly relied upon the testimony of three eye witnesses, namely, PW-1 Mohammad Zaman Khan, PW-2 Abrar Ahmad @ Raju and PW-3 Fasih Uddin. PW-6 Dr. R.N. Bhardwaj, who had performed post mortem examination on the body of the deceased at 2.30 p.m. on 11.11.1978, proved the post mortem report in his deposition before the court. Besides them the Investigating Officer of the case, namely, PW-5 Surat Singh, Station Officer, P.S. Ganj and some other formal witnesses were also examined. The accused examined DW-1 K.K. Srivastava, Assistant Jailor, District Jail, Bareilly, who deposed that Rahat son of Nawab Jan resident of Station Road, P.S. Civil Lines, Distt. Moradabad, was admitted in the District Jail, Bareilly on 25.1.1979 in connection with a case under Section 112 of Railways Act and after deposit of fine, he was released from jail on 27.1.1979. The learned First Additional Sessions Judge, after careful analysis of the evidence on record, found the prosecution to be correct and convicted both the accused, namely, the appellant Munney @ Rahat Jan Khan and Sarwar under Section 302 read with Section 34 IPC and sentenced them to imprisonment for life under the said count. Sarwar was also convicted under Section 307 IPC whereunder he was sentenced to three years RI and his sentences were ordered to run concurrently. Both the accused preferred appeal against their conviction and sentence before the High Court, but the same was dismissed by the judgment and order dated 23.11.2001.

5. The present appeal has been filed by Munney @ Rahat Jan Khan alone. Learned counsel for the appellant has submitted that the eye witnesses examined by the prosecution were not residents of the locality where the incident took place and as such their presence on the spot at the time of the occurrence is highly doubtful. He has also submitted that PW-2 Abrar Ahmad @ Raju was younger brother of the deceased and PW-3 Fasih Uddin was his brother-in-law and being close relatives of the deceased they were highly interested witnesses and it would not be safe to place reliance on their testimony. Learned counsel has further submitted that the identity of the appellant Munney @ Rahat Jan Khan has not been fully established as there were several other persons having the same name.

6. It is well settled that while hearing an appeal under Article 136 of the Constitution this Court will normally not enter into reappraisal or review of the evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. The Court may interfere where on proved facts wrong inference of law is shown to have been drawn (see Duli Chand vs. Delhi Administration (1975) 4 SCC 649, Mst. Dalbir Kaur and others vs. State of Punjab (1976) 4 SCC 158, Ramanbhai Naranbhai Patel and others vs. State of Gujarat (2000) 1 SCC 358 and Chandra Bihari Gautam and others vs. State of Bihar JT 2002 (4) SC 62). Though the legal position is quite clear still we have gone through the evidence on record in order to examine whether the findings recorded against the appellants suffer from any infirmity mainly because the sentence imposed is imprisonment for life.

7. There is no dispute that the house in which Sakhawat accused was residing had been purchased by Abdul Gaffar Querreshi, who is father of the deceased Iqbal Farooq Ahmad and he had filed a suit for arrears of rent and eviction, which was decreed and in execution of the decree Sakhawat was evicted from the house on 16.10.1978 and his moveable properties were also attached and were given in the custody of PW-1 Mohammad Zaman Khan. The moveable properties were not removed from the house and the house had been locked. It is the specific case of the prosecution that the deceased Iqbal Farooq Ahmad and PW-1 Mohammad Zaman Khan, in whose custody the moveable properties had been given, had gone to see the house in the morning of 11.11.1978 and PW-2 Abrar Ahmad @ Raju and PW-3

Fasih Uddin had also accompanied them. That the murder of Iqbal Farooq Ahmad took place right in front of the house is not open to challenge, as PW-5 Surat Singh, Station Officer, P.S. Ganj has deposed that he reached the place of occurrence at 10.00 a.m. and found the dead body lying just in front of room on the right side of the house. He also found considerable quantity of blood lying on the spot and took in his possession plain and blood smeared earth from the said place. According to the report of the chemical analyst (Ex. Ka-2) the blood smeared earth contained human blood. The house belonged to Abdul Gaffar Querreshi and there is nothing unnatural if his two sons, namely, the deceased Iqbal Farooq Ahmad and PW-2 Abrar Ahmad @ Raju went to see the same as the house had been locked and no body was living there. Similarly, the presence at the spot of PW-1 Mohammad Zaman Khan is also very natural as he was the 'supurdgar' and moveable properties had been given in his custody and thus he was responsible for their safety. Therefore, the presence on the spot of the three eye witnesses examined by the prosecution is very natural and the mere fact that they do not belong to the same 'mohalla' cannot be a ground to discard their testimony. Both PW-1 Mohammad Zaman Khan and PW-3 Fasih Uddin are residents of same police station Ganj in the city of Rampur and consequently their houses would not be at a great distance from the place of occurrence.

8. We have also gone through the testimony of the three eye witnesses examined by the prosecution. They have consistently deposed that Sakhawat accused first gave a blow by a big size dagger on the abdomen of the deceased and after receiving the injury the deceased fell down on the spot. Thereafter, the appellant Munney @ Rahat Jan Khan and Sarwar accused gave blows by dagger on the neck, face and hand of the deceased. The doctor, who performed post mortem examination, found the following ante mortem injuries on the body of the deceased: -

"1) Incised wound 11 cm x 1 cm x bone deep on right side face across the middle of nose cutting through the bone of nose & cheek bone.

2) Incised wound 14 cm x 4 cm x bone deep on right side neck just below lower jaw across neck, cutting the major vessels of neck and extending deeper down to the vertebral column.

3) Incised wound 3 cm x 1.5 cm x muscle deep across right side neck adjacent to injury no. (2).

4) Incised wound across the neck starts from centre extends to left of neck 5 cm x 1.5 cm x cutting the trachea and 3 cm above left sternoclavicular joint.

5) Incised wound 9 cm x 2 cm x bone deep on back of right forearm just below elbow joint. This wound across the right forearm has cut through a chip of ulna bone.

6) Incised wound 15 cm x 8 cm on right side abdomen obliquely across, 6 cm right to umbilicus. The wound is abdomen cavity deep. Loops of intestine coming out of the wound and they are divided at three places."

The internal examination showed that Trachea was cut under injury number 4, large vessels were cut under injury number 2 and small intestines were cut at three places under injury number 6. In the opinion of the doctor the cause of death was shock and haemorrhage as a result of multiple injuries. The eye witnesses account find complete corroboration from the medical evidence. It may be noted that in the FIR, which was very promptly lodged within 25 minutes of the occurrence at 9.10 a.m., it was mentioned that intestines of the deceased had come out, which fact is also noted in the post mortem report while describing injury number 6. The lodging of a prompt FIR within 25 minutes of the occurrence wherein names of all the three eye witnesses were also mentioned coupled with the fact that the

Investigating Officer reached the place of occurrence at 10.00 a.m. lend complete assurance to the prosecution case. Nothing has come out in the cross-examination of the witnesses, which may throw even a slightest doubt upon the veracity of the prosecution version of the incident.

9. Learned counsel for the appellant has next submitted that the identity of the appellant Munney @ Rahat Jan Khan was not established. It may be mentioned here that in the FIR it was mentioned "Munney resident of Jail Road". All the three eye witnesses while deposing in the court have specifically stated that the three accused standing in the dock were the assailants. The accused in his statement under Section 313 Cr.P.C. also gave his address as Jail Road. No evidence has been adduced by the defence to show that there are many persons having the name of Munney and are residing on Jail Road. Nothing has come out in the cross-examination of the witnesses to show that apart from the appellant Munney @ Rahat Jan Khan, there are other persons having the same name and are residing on Jail Road. Thus the contention raised by the learned counsel has no substance.

10. Learned counsel has lastly submitted that the appellant Munney @ Rahat Jan Khan was less than sixteen years of age and as such he was entitled to the benefit of Juvenile Justice Act, 1986. It may be mentioned here that the incident in question took place on 11.11.1978 and the learned First Additional Sessions Judge convicted the appellant by judgment and order dated 26.2.1980. The Juvenile Justice Act came into force in 1986. At the relevant time Uttar Pradesh Children Act, 1951 was applicable. This Act afforded protection to a child and the definition of child under Section 2(4) of the said Act said that a child means a person under the age of sixteen years. The statement of the appellant under Section 313 Cr.P.C. was recorded on 19.1.1980, i.e., nearly 14 months after the occurrence wherein he gave his age as 18 years and further stated that he was studying in Class XII. Thus on his own showing he was nearly 17 years of age at the time of occurrence. No plea regarding the fact that the appellant was a child within the meaning of Uttar Pradesh Children Act, 1951 was taken either during the course of his trial or in appeal before the High Court. If the appellant was a child such a plea would have certainly been taken at the earliest possible opportunity at the initial stage when he was arrested or in the trial. We are clearly of the opinion that the appellant was not a child at the time of commission of the offence and he was not entitled to the benefit or protection of the Uttar Pradesh Children Act, 1951.

11. For the reasons discussed above we find no merit in the appeal, which is hereby dismissed.