

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 669 OF 2006

CHUNNI LAL

...APPELLANT

VERSUS

STATE OF U.P.

...RESPONDENT

J U D G M E N T

Dr. Mukundakam Sharma

1. The present appellant has preferred this appeal being aggrieved by the judgment and order dated 10.02.2006 passed by the Allahabad High Court upholding the order of conviction and sentence passed by the Second Additional Sessions Judge, Banda against the appellant under Section 302 of the Indian Penal Code [for short 'IPC'] and sentencing him to life imprisonment.

2. The aforesaid Sessions Trial case was registered for an offence punishable under Section 302 IPC for allegedly committing murder by the present appellant Chunni Lal of his uncle Heera Lal at about 8.00 p.m. on 07.05.1978 in village Baramafi, Police Station Pahari, District Banda.
3. The First Information Report [for short 'FIR'] was lodged by Juggi Lal [PW-1] who is allegedly an eyewitness to the occurrence and the same was lodged at 08.05.1978 at 6.30 a.m. The deceased Heera Lal was the uncle of the accused Chunni Lal inasmuch as both Ramdeo and Heera Lal were sons of Ram Ratan. Heera Lal was unmarried but was keeping one Kainya alias Chandrakaliya as his mistress or concubine for the last about 25-26 years preceding the incident. She was earlier married to one Jagannath Kalar but sometime prior to the incident Heera Lal performed marriage with her and a document in that regard was executed on 15.02.1978 before the Marriage Officer. In view of the aforesaid position the appellant Chunni Lal who was hoping to succeed to the estate of the deceased Heera Lal thought that his hopes of succeeding to this estate

would be lost and, therefore, it is alleged that the accused had committed the aforesaid offence by going to the agricultural field of deceased Heera Lal when deceased was processing the harvest of mustard crop in his field. It is alleged that after going there the accused fired two rounds of bullets from the DBBL gun of the deceased in the presence of Juggi Lal [PW-1] and Ram Sakh [PW-2]. The incident happened at 8.00 p.m. on 07.05.1978 and the FIR was lodged on 08.05.1978 at 6.30 a.m. The investigating officer who is the Sub-Inspector of the Police Station went to the village at 7.15 p.m. for investigation. During the course of investigation he took a DBBL gun and other material exhibits into his custody and recorded the statements of the witnesses and thereafter submitted a chargesheet against the appellant herein.

4. During the trial seven witnesses were examined on behalf of the prosecution whereas none was examined on behalf of the defence. The appellant was also examined under Section 313 of the Code of Criminal Procedure and thereafter the Second Additional Sessions Judge, Banda, who was the

trial Judge, passed a judgment and order of conviction against the appellant finding him guilty of committing an offence under Section 302 IPC. By a separate order dated 21.12.1981 the learned trial Court sentenced the appellant to life imprisonment.

5. Being aggrieved by the said judgment and order the appellant filed an appeal before the Allahabad High Court which was heard by a Division Bench of the High Court. The Division Bench of the High Court by its judgment and order dated 10.02.2006 upheld the order of conviction and sentence and dismissed the appeal filed by the appellant. Appellant therefore filed the present appeal on which we have heard the learned counsel appearing for the parties.
6. The learned counsel appearing for the appellant took up several pleas during the course of his arguments in support of his stand that the appellant is innocent. We propose to deal with each of the submissions made by the counsel appearing for the appellant.

7. The first submission which was made by the counsel appearing for the appellant was with regard to the motive for the crime alleged against the appellant. The appellant contended through his counsel that there was absolutely no motive for the appellant to commit the crime as he was a natural heir being the nephew of the deceased as both PWs 1 & 2 are illegitimate sons of the deceased and therefore there was a motive for the PWs 1 & 2 to implicate the accused in the offence.

8. In the instant case it is established from the records that PWs 1 & 2 were born out of the relationship between the deceased and their mother Chandrakaliya who earlier was kept as a mistress or concubine by the deceased Heera Lal for about 25-26 years. PW-1 at the time of deposition was 20 years of age whereas PW-2 was aged about 25 years. It is established from the aforesaid fact that both of them were born out of the relationship between the deceased Heera Lal and Chandrakaliya as their relationship started about 25-26 years preceding the incident. It is also established from the evidence adduced that about three months prior to the

incident Heera Lal performed marriage with the said lady and a document was executed in that regard on 15.02.1978 before the Marriage Officer. It is to be noted that incident took place occurred only a few months thereafter that is on 07.05.1978. On having found that his chance of inheriting the estate of the deceased was practically lost due to the aforesaid marriage, the accused might have thought of taking revenge on his uncle for depriving him of his right to inherit his estate and therefore immediately went to the place of occurrence on the night of 07.05.1978 picked up the DBBL gun, loaded the same and fired upon the deceased twice.

9. This, in our estimation is the reason and motive for the crime and not the one which was advanced by the counsel appearing for the appellant, for by the time the incident had taken place, the deceased had legalized his relationship and married said Chandrakaliya thereby giving legal status to PWs 1 & 2 as his sons. In that situation there was no possibility at all of the appellant inheriting the property of his uncle and therefore the plea taken by the appellant

regarding motive appears to be without any merit. Rather on the other hand, we find a clear motive on the part of the appellant- accused for committing the murder of his uncle.

10. In this regard we wish to refer to the decision of this Court in the case of **Raghubir Singh & Others v. State of Punjab** reported in **[1996] 9 SCC 233** which is as follows: -

“7. The motives may be minor but nonetheless they did provide an occasion for attack on the deceased by the appellants. That apart, even in the absence of motive, the guilt of the culprits can be established in a given case if the other evidence on the record is trustworthy and the absence of proof of motive has never been considered as fatal to the prosecution case where the ocular evidence is found reliable.....”

11. The same is also corroborated by the fact that after the death of the deceased the family of the accused including the accused himself took several steps to get the land of the deceased transferred and mutated in their names instead of PWs 1 & 2 and their brothers. Even in the cross-examination of the prosecution witnesses examined in the present criminal case of murder, an effort was being made to dislodge the claim of PWs 1 & 2 to inherit the property of the deceased. Both PWs 1 & 2 have been extensively cross-examined in that regard but

their evidence in support of their claim of inheritance could not be shaken. The submission of the appellant therefore that there was no motive to kill his uncle cannot be accepted in view of the aforesaid extensively discussed clear facts and circumstance of the case.

12. The second submission which was advanced by the counsel appearing for the appellant was that the prosecution had examined only the interested witnesses who were closely related to the deceased. It was contended by the appellant that the only independent witness who was examined was PW 5, and PW5 having turned hostile, the conviction and sentence passed against the appellant is required to be set aside and quashed. It is no doubt true that PWs 1 & 2 are the sons of the deceased and they are brothers. They have been examined in the trial as the eye-witnesses to the occurrence. The evidence adduced by PWs 1 & 2 also indicate that besides them there was another witness namely Jagdeo Pradhan who was also present at the place of occurrence when the incident had occurred. It has also come in evidence that said Jagdeo Pradhan who otherwise would have been an independent

witness died during the trial and before his evidence could be recorded. Both PWs 1 & 2 were cross-examined at length by the defence but not even a single question was put in such cross-examination that said PWs 1 & 2 were not present at the place of occurrence. They are natural witnesses as their presence at the place of occurrence at the relevant time was usual and expected.

13. Both PWs 1 & 2 have given a vivid account of the incident and the manner in which the incident had occurred. It is proved from the records that when there father was doing the cleaning work of the mustard at about 8.00 p.m. on the fateful day, accused Chunni Lal came there and immediately picked up the DBBL gun belonging to the deceased, loaded both the barrels with cartridge and fired twice at Heera Lal, as a consequence of which, Heera Lal died. PW-2 has also given a vivid description of the incident including the fact that when he chased Chunni Lal and caught his leg after 6-7 feet he even managed to snatch the gun from the hand of the accused. It is also disclosed from evidence recorded that despite falling down the accused stood up immediately and ran away with

the belt of cartridges towards the South. There was another independent witness Sri Keshan [PW-5] who was present at the time of the occurrence. He, however, turned hostile in the trial during his examination-in-chief.

14. Having considered the evidence of PWs 1 & 2 who were the eye-witnesses to the occurrence we are satisfied that they were present at the place of occurrence in a usual and natural manner when the incident had taken place and they had actually seen the occurrence. The incident had happened at 8.00 p.m. in the night in the field of the deceased which was not only an agricultural field but also a dacoit infested area and therefore it is reasonable to assume that even the deceased kept a gun with him with a belt of bullets in open for security reasons. The accused knew that a gun is always kept in the field and at the place of work, for he used to visit them at the field occasionally and even at night. That was also the reason why he did not carry any weapon with him, so as to avoid a suspicion in the mind of the deceased.

15. The accused used the weapon of the deceased himself for firing upon him. Two bullets were fired which resulted in two

injuries which are established from the medical evidence available on record. The ocular evidence, therefore, fully corroborates the medical evidence. In that view of the matter it cannot be said that the evidence of PWs 1 & 2 should be discarded as they are interested witnesses particularly when their evidence adduced could not be shaken by the defence in the cross-examination.

16. In **Jayabalan Vs. U.T. of Pondicherry** reported in **2010 (1) SCC 199**, this Court while dealing with the evidence of the interested witnesses held as under:-

“.....We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.”

17. Another submission which was made by the counsel appearing for the appellant was that there was a delay in both lodging the FIR as also in initiating the investigation by the

police. It was submitted that although the incident had taken place on 07.05.1978 at about 8.00 p.m., the FIR was lodged on 08.05.1978 at 6.30 a.m. only whereas the investigation was started by the police only in the evening.

18. On proper appreciation of the evidence we find that although the incident had happened at 8.00 p.m. on 07.05.1978 PWs 1 & 2 have clearly stated that they did not dare to go out of the place of occurrence due to fear. It has also come in evidence that the entire area was dacoit infested area and police station was also about eight kilometers away from the place of occurrence and therefore it was quite possible that PWs 1 & 2 who were the eye-witnesses and the sons of the deceased thought it fit to travel out of the place of occurrence at about 4.00 a.m. in the morning to lodge the FIR which was accordingly lodged at the police station at 6.30 a.m. Although it was stated in the evidence that the investigating officer namely the Sub-Inspector was present at the police station in the morning hours when the informant reached the police station but it has also come in evidence that he was required to go to the Court which was functioning from 6 a.m.

in the morning. Therefore the constable took the statement of the informant and carried the records to the Court to apprise about the case to the Sub-Inspector, the Investigating Officer. The Investigating Officer had clearly stated in his deposition that he came back from the Court at about 1'o clock. The Court was located at quite a distance from the police station and after going back to the police station and after doing the needful he went to the village in the evening for carrying out his investigation. It is, therefore, established that there is well reasoned and proper explanation for the delay both in the lodging of the FIR as also in starting of the investigation by the Investigating Officer. In this regard we would like to refer to a decision of this Court in the case of **Silak Ram & Another v. State of Karnataka** reported in **[2007] 10 SCC 464** relevant portion of which is as follows: -

“12.Delay in lodging FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay coupled with the likelihood of concoction of evidence. There is no hard-and-fast rule that delay in filing FIR in each and every case is fatal and on account of such delay the prosecution version should be discarded. The factum of delay requires the court to scrutinise the evidence

adduced with greater degree of care and caution. In this case the eyewitnesses have given a vivid description of the events. The evidence of PW 11 as noted above, is cogent and consistent and the version given by this witness fits with medical evidence.”

The aforesaid delay which was caused due to reasonable factual situation cannot destroy the prosecution case nor creates any suspicion with regard to the prosecution case. It also cannot be said under any circumstance and particularly because of the aforesaid explanation available on record that the FIR is ante-timed as submitted by the counsel appearing for the appellant.

19. There is another very vital and important factor in this case, which is the fact of the accused absconding immediately after the occurrence. PWs 1 & 2 stated that immediately after the accused opened fire on the deceased through the gun and after PW-2 was able to snatch away the rifle from the accused the accused got up and ran away from the place of occurrence and thereafter he was not available either at the place of occurrence or in the village. It is established from the evidence of the Investigating Officer that on 20.05.1978 he received an

information that the accused surrendered in the Court of Chief Judicial Magistrate. The said information received by him was noted in the case diary. The fact that the accused ran away from the place of occurrence and was not traceable thereafter in the village and the fact that he surrendered only on 20.05.1978 although the incident had occurred on 07.05.1978 clearly indicate that the appellant was guilty of the offence alleged against him.

20. All the aforesaid discussions and facts, therefore, lead to one and the only conclusion that the appellant is guilty of the offence alleged against him.

21. In our considered opinion, the accused has been rightly convicted of the offence under Section 302 IPC. This appeal, therefore, has no merit and is dismissed accordingly.

.....J.
[Dr. Mukundakam Sharma]

.....J.
[H.L. Dattu]

New Delhi
July 5, 2010.

