

Non-reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.114 OF 2007

Lallan Chaubey

... Appellant

Versus

State of U.P.

... Respondent

J U D G M E N T

Aftab Alam, J.

1. This appeal is directed against the judgment and order dated October 6, 2006 passed by the Allahabad High Court in Government Appeal No.1890/1991 and Criminal Revision No.1140/1991. The High Court, setting aside the judgment of acquittal passed by the trial court, convicted the appellant under Section 302 of the Penal Code for committing the murder of one Raj Kumari and sentenced him to undergo rigorous imprisonment for life.

2. The appellant along with his father Yamuna Chaubey and brother Ram Vyas Chaubey was tried on charges under sections 302/307/34 of the Penal Code. According to the prosecution case, the three accused, Yamuna Chaubey and his two sons and the

members of the prosecution party were agnates with a history of litigation behind them. There were disputes between the two sides over the sehans (open courtyard) between their houses. Earlier, the informant Shiv Dutt Chaubey, had filed a suit and obtained an *ex parte* decree against Yamuna Chaubey who had filed a petition for setting aside the *ex parte* decree. Yamuna Chaubey in his turn had filed another suit claiming that Shiv Dutt Chaubey was living in his house as a licensee and was refusing to vacate it despite the termination of the licence. On May 31, 1987, Shiv Dutt Chaubey and his family members were standing outside towards the east of their house when his younger son Om Narain started sweeping the land between the two sehans. The appellant probably taking it as assertion of their right over the disputed land forbade him from coming over the land as it belonged to them. When Om Narain persisted with his sweeping, the appellant attempted to assault him on which the informant along with his other son and three daughters Shiv Kumari, Prem Kumari (PW.2) and Raj Kumari intervened. The appellant then went inside his house and came back carrying his licenced double barrel gun. He was accompanied with the other two accused who were allegedly armed with spear and lathi, respectively.

The father Yamuna Chaubey exhorted him to put an end to the daily provocation from the other side. The appellant aimed his gun at the informant and fired. At that moment one of the informant's daughter, namely, Raj Kumari tried to stop him with the result that the shot fired by the appellant hit her on the right side of chest. The appellant fired another shot aiming at Om Prakash but missed him. On 'halla' raised by the members of the prosecution party, Ram Sakal Chaubey and Jagat Narain (PW.3) arrived at the spot and they too witnessed the occurrence. The accused then went back to their 'Baithaka' and Raj Kumari was taken to the Ballia District Hospital where she was declared dead. An FIR was lodged at 8.55 P.M. on the same day.

3. The prosecution in support of its case led ocular and medical evidences but the trial court on a consideration of the materials adduced before it acquitted all the three accused by the judgment and order dated May 31, 1987 passed in ST No.198/1987.

4. Against the judgment and order passed by the trial court, both the State and the informant filed an appeal and a revision respectively. During the pendency of the Government Appeal, one of the accused Yamuna Chaubey died and the appeal insofar as he was concerned abated; it was finally, heard in regard to Lallan Chaubey

and Ram Vyas Chaubey. The High Court held that there was no evidence to show that Ram Vyas Chaubey shared the common intention to commit murder and, therefore, acquitted him of the charges but in regard to the appellant Lallan Chaubey, the High Court allowed the appeal, set aside the judgment of the trial court and convicted and sentenced him as noted above.

5. The High Court examined the evidence adduced by the prosecution in great detail and considered the reasons assigned by the trial court for recording the judgment of acquittal. The High Court took the view, and, in our opinion, very rightly that the trial court had rejected the consistent and otherwise highly credible evidences of the eye witnesses for reasons that were wholly untenable and the judgment of the trial court insofar as the appellant is concerned, had resulted into miscarriage of justice.

6. The trial court had assigned mainly four reasons for not accepting the prosecution case. It took the view that the FIR was ante timed; the place where the occurrence took place was not established; there was inconsistency between the ocular evidence and the medical evidence and finally no independent witness was examined on behalf of the prosecution.

7. The trial court reasoned that the FIR was ante timed because it was shown to have been recorded at 8.55 P.M. on the date of occurrence. According to PW.8, the I.O., he reached the village on the same day, late in the evening, at 10.30 P.M. and yet he prepared the site plan only in the morning of June 1, 1987. It was, thus, the delay in preparing the site plan that led the trial court to assume that the FIR would not have been recorded the previous evening at 8.55 P.M. and it bore a wrong time of its recording. The High Court rightly observed that the reason given by the trial court to condemn the FIR as ante timed was wholly fanciful and unreasonable. There may be any number of reasons for the I.O. not to prepare the site plan of the place of occurrence in the night but wait till the morning and, to hold that the FIR was ante timed, on that basis alone was highly unreasonable.

8. Coming then to the identification of the place of occurrence, the trial court placed great reliance on the note sent by the doctor at the Ballia District Hospital to the police informing about the arrival of Raj Kumari there with gun shot injury. In this note (exhibit Ka-7) she was described as wife of Chandra Prakash Pathak and it was stated that she was brought to the hospital by one Mahanth Pathak son of Gopal

Pathak, resident of village Nagwa. In exhibit Ka-7 there was no reference of her as the daughter of Shiv Dutt Chaubey, resident of village Akhtar, where according to the prosecution, the occurrence took place. This was sufficient for the trial court to doubt the prosecution case that the occurrence took place at the place and in the manner as stated by the prosecution. The High Court pointed out that the trial court completely overlooked the simple explanation provided by the prosecution that shortly before the occurrence Raj Kumari was married to Chandra Prakash Pathak of village Nagwa. When the occurrence took place it was natural for them to send the information to her in-laws at Nagwa which was situated nearby. From there Mahanth Pathak a close relative of her husband accompanied them to the hospital and it was he who met with the doctor and spoke to him. The High Court is again right in holding that this could hardly be a reason for the trial court to doubt the place of occurrence more so as the I.O. has found human blood at that spot.

9. The High Court also discussed the other two reasons given by the trial court for disbelieving the prosecution case and very effectively showed that the reasons assigned by the trial court were specious and unfounded. The High Court rightly took the view that

the ocular evidence of the informant, his other daughter Prem Kumari and Jagat Narain were quite credible and there was no reason not to accept their testimony.

10. Mr. Anoop Kumar Srivastava, counsel for the appellant tried to contend that the view taken by the trial court was a reasonable and possible view and, therefore, the High Court was in error in interfering with the judgment of acquittal. Mr. K.T.S. Tulsi, senior counsel who came at the fag end of the hearing of the case confined his submissions to some self perceived inconsistency between the ocular evidence and the medical evidence. Mr. Tulsi laid great stress that according to the ocular testimony at the time of firing the shot, the appellant and Raj Kumari were not standing at the same level and from there he tried to build up an argument that the direction of the movement of the pellet inside the victim as found by the Doctor belied the prosecution case. In support of his submission he relied upon some decisions of this Court in which the presence of the eye witnesses at the time of the occurrence was doubted and their testimony was not accepted in light of the medical evidence. In the facts of this case, we fail to see any inconsistency in the medical evidence and the ocular evidence and, therefore, the decisions relied

upon by Mr. Tulsi have no application to this case. It is to be noted that in this case according to the medical evidence the shot had hit the head of the humerus that got punctured and the signs of the wound were medially towards inside and slightly towards below and it was from the right to left. Once the pellets hit a hard substance like the humerus bone, they can get deflected in any direction and on that basis it cannot be said that there is any inconsistency between the medical evidence and the ocular evidence. We are in agreement with the High Court that the ocular evidence in this case is highly consistent and leaves no room for any doubt about the commission of the offence by the appellant.

11. We find no merit in this appeal. It is, accordingly, dismissed.

.....J.
(Aftab Alam)

.....J.
(R.M. Lodha)

New Delhi;
October 29, 2010.