

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2025:AHC-LKO:20568-DB

Judgment Reserved on 03.03.2025

Judgment Delivered on 11.04.2025

Court No.-9

Case :- CRIMINAL APPEAL No. - 1615 of 2002

Appellant :- Jodhhan @ Jeevdhan In Jail

Respondent :- State of U.P.

Counsel for Appellant :- Vivek Pandey, Nadeem
Murtaza, Ran Vijay Singh

Counsel for Respondent :- Govt. Advocate

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Ajai Kumar Srivastava-I,J.

(Per : Ajai Kumar Srivastava-I,J.)

1. Heard Shri Nadeem Murtaza, learned Amicus Curiae for the appellant, Shri Prabhat Adhauya, learned A.G.A.-I for the State and perused the entire record.

2. Under challenge in this criminal appeal is the impugned judgment and order dated 04.10.2002 passed by the learned Additional Sessions Judge/First Fast Track Court, Gonda in Sessions Trial No.290 of 1998, arising out of Crime No.165 of 1998, under Section 302 of the Indian Penal Code¹, Police Station Sadulla Nagar, District Balrampur, whereby the

¹ hereinafter referred to as "I.P.C."

appellant has been convicted and sentenced to undergo life imprisonment for the offence under Section 302 I.P.C. with a fine of Rs.5000/- and in default of payment of fine, he has further been directed to undergo six months's additional rigorous imprisonment.

3. The prosecution case in brief is that on 29.05.1998 at about 8:00 A.M., one Kanhaiya Lal S/o Ram Harakh, who belonged to the village of the first informant, Ambika Prasad reached his house and demanded a sum of Rs.40/-, stating that he had lent his cow for grazing and the money was required to retrieve his cow. However, the first informant did not give him money as demanded but allegedly stated that he would accompany Kanhaiya Lal and help him retrieve his cow. While the first informant was going with Kanhaiya Lal, they stopped at the tap of one Sahdeo S/o Sukai to drink water and in the meantime, wife of the co-accused, Bhulai Kurmi, namely, Smt. Rani arrived at the spot and began talking with Kanhaiya Lal. The appellant, Jodhhan alias Jeevdhan and his brother, co-accused, Bhulai Kurmi reached at the spot. The co-accused, Bhulai Kurmi was armed with an axe while the appellant, Jodhhan alias Jeevdhan was armed with a spade (*Kudal*). As soon as they arrived, the co-accused, Bhulai Kurmi started abusing his wife, Rani, accusing her of secretly meeting with Kanhaiya Lal again. He also started abusing Kanhaiya Lal and even chased him with the intent to kill him. Kanhaiya

Lal ran towards the house of Sahdeo but the co-accused, Bhulai Kurmi caught him and exhorted the appellant, Jodhhan alias Jeevdhan to kill him. The appellant, Jodhhan alias Jeevdhan assaulted Kanhaiya Lal, causing his death on the spot. Upon hearing the hue and cry, the villagers reached at the spot, but the appellant, Jodhhan alias Jeevdhan and his brother, co-accused, Bhulai Kurmi fled away from the spot.

4. On the basis of aforesaid written report, Ext. Ka-1 submitted by the first informant, Ambika Prasad, the first information report, Ext. Ka- 3 came to be lodged against the accused/appellant under Section 302 I.P.C.

5. The inquest proceeding started on 29.05.1998 at 12:15 P.M. and got concluded on 29.05.1998 at 15:05 P.M. The inquest report has been duly proved by P.W.-7, Shiv Das Gautam, S.I. as Ext. Ka-2.

6. P.W.-6, Dr. J. P. Singh had examined the injured, Rani at about 10:30 A.M. on 30.05.1998 and a report to this effect has been proved by him as Ext. Ka-6. The following injuries were found by P.W.-6, Dr. J. P. Singh on the body of the injured :-

1. Red contusion 1.5 cm x 0.5 cm on Right side of face just below to Right eye.

2. Abrasion 1 cm x 0.2 cm on Left side of forehead 1.5 cm above to left eye brow.

3. Abrasion 0.5 cm x 0.5 cm on back of Right heel.

7. The postmortem of the deceased has been conducted by Dr. R. P. Maurya, P.W.-5 and the report has been proved by him as Ext. Ka-5.

8. According to the postmortem report, Ext. Ka-5, the cause of death of the deceased is reported to be shock and haemorrhage as a result of ante mortem injuries and following ante-mortem injuries were reported on the body of the deceased :

1. Incised wound 8 cm x one cm x Brain deep on (Rt) side head 6 cm above (Rt) ear Bone is cut .

2. Incised wound 6 cm x 1/2 cm x bone deep on left side head 5 ½ cm above left ear . Bone is cut .

3. Incised wound 5 cm x one cm x muscle deep on (Rt) side neck 4 cm below (rt) ear .

4. Incised wound 6 cm x one cm x muscle deep on (Rt) side neck 2 cm below injury no. (3) All the structure including artery & Vien and fracture and oesphagus is cut.

5. Multiple abraided contusion in area of 13 cm x 6 cm on left shoulder .

6. Incised wound 8 cm x 6 m x bone deep on front of (Rt) leg 3 cm above (Rt) ankle joint. Both bones are fractured.

7. Incised wound 8 cm x 5 cm x bone deep on front of left leg 2 cm above left ankle joint . Both bones are fractured.

9. The Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure². He visited the places of occurrence and prepared two site plans thereof as Ext. Ka-7 and Ext. Ka - 19.

10. Upon conclusion of investigation, the Investigating Officer submitted a charge sheet under Section 302 I.P.C., Ext. Ka-16 against the accused/ appellant.

11. Charge for the offence under Section 302 I.P.C. was framed against the accused/ appellant, who denied the charge and claimed to be tried.

12. In order to bring home guilt of the accused/ appellant, the prosecution has examined Ambika Prasad, complainant as P.W.-1, Haridwar as P.W.-2, Lallan as P.W.-3, Ravi Prakash Singh as P.W.-4, Dr. R. P. Maurya as P.W.-5, Dr. J. P. Singh as P.W.-6, Shiv Das Gautam as P.W.-7 and Suresh Singh, S.I. as P.W.-8 .

13. The accused/ appellant, in his statement recorded under Section 313 Cr.P.C., has stated the prosecution story to be false. He has also stated to have been falsely implicated in this case and has also claimed to be innocent.

² hereinafter referred to as " Cr.P.C"

14. Smt. Rani as D.W.-1 was examined by the accused/ appellant before the learned trial court.

15. The learned trial court, after appreciating the evidence available on record, rendered the impugned judgment and order dated 04.10.2002, whereby the accused/ appellant came to be convicted as aforesaid.

16. Aggrieved by the aforesaid impugned judgment and order dated 04.10.2002, the accused/ appellant has preferred the instant criminal appeal.

17. Learned Amicus Curiae for the accused/ appellant has submitted that the finding of guilt of the accused/ appellant arrived at by the learned trial court is perverse and contrary to the evidence available on record, therefore, it deserves to be set aside.

18. His further submission is that though the prosecution has its definite case that the motive for committing the crime-in-question is stated to be an illicit relationship between Smt. Rani, wife of co-accused, Bhulai Kurmi and the deceased, Kanhaiya Lal. Smt. Rani has not been examined by the prosecution to lend support to the prosecution's case on this issue. However, she has been examined as D.W.-1 by the defence, who has stated on oath that she did not have any illicit relationship with the deceased, Kanhaiya Lal.

19. He has also submitted that P.W.-2, Haridwar who is none other than the brother of the deceased, Kanhaiya Lal was not mentioned as a witness of this incident in the first information report. Therefore, the only reasonable inference which can be drawn is that had P.W.-2, Haridwar been the witness of the alleged incident, he would have been named in the first information report as a witness of the alleged incident. P.W.-2, Haridwar is not the first informant also.

20. Learned Amicus Curiae for the appellant has also drawn attention of this Court to the fact that P.W.-3, Lallan who, in his testimony, has supported the prosecution case. However, this witness has stated that P.W.-1, Ambika Prasad and P.W.-2, Haridwar reached at the place of alleged incident together. He has also stated that P.W.-1, Ambika Prasad, Gram Pradhan of the village concerned said that the F.I.R. would be registered against the appellant. He has also stated that he did not see Smt. Rani, wife of co-accused, Bhulai Kurmi at the place of incident which shows that the prosecution case suffers from glaring inconsistency and the same renders the entire prosecution story doubtful.

21. His next submission is that learned trial Court has erred in placing reliance upon the alleged recovery of weapon from co-accused, Bhulai Kurmi to convict the appellant. In this regard, he has submitted that having

regard to the provisions contained in Section 27 of Indian Evidence Act, 1872, the only discovery made in pursuance of any statement given by the accused himself may be proved against him. His submission is that any statement given by co-accused, Bhulai Kurmi regarding alleged involvement of the present appellant is not admissible and could not have been relied upon by the learned trial Court for convicting the appellant. In order to substantiate his aforesaid contention, reliance has been placed by him on a judgment rendered by Hon'ble the Supreme Court in **Boby vs. State of Kerala** reported in **(2023) 15 SCC 760**.

22. Per contra, learned A.G.A. for the State has submitted that the appellant rightly came to be convicted vide impugned judgment and order dated 04.10.2002, which is well discussed and reasoned. The appellant was named in the first information report. The prosecution has proved its case beyond reasonable doubt on the basis of cogent and reliable testimonies of prosecution witnesses. Therefore, interference by this Court is neither warranted nor justified. He, accordingly, prays for dismissal of the instant criminal appeal.

23. Having heard learned Amicus Curiae for the accused/ appellant, learned A.G.A. for the State and upon perusal of record, we notice that the written report, Ext. Ka-1 in respect of the incident which is

stated to have occurred on 29.05.1998 at about 8:00 A.M was lodged by P.W.-1, Ambika Prasad who is Gram Pradhan of the village concerned. Needless to mention that the name of P.W.-2, Haridwar, who is the brother of the deceased and who is stated to have seen this incident, is not mentioned in the written report, Ext. Ka-1 as a witness of the incident in question. He is not the first informant also.

24. From a perusal of the written report, Ext. Ka-1, it transpires that the entire incident was witnessed by the first informant, P.W.-1, Ambika Prasad, who was accompanying the deceased, Kanhaiya Lal on the date of incident. It is also mentioned in the written report, Ext. Ka-1 that Smt. Rani, wife of the co-accused, Bhulai Kurmi arrived at the place of occurrence, who also witnessed this incident. Besides P.W.-1, Ambika Prasad and Smt. Rani, wife of the co-accused, Bhulai Kurmi, this incident is stated to have been witnessed by Sahdeo Kumhar, Lallan, Harjar and other villagers also, who had reached at the place of occurrence when P.W.-1, Ambika Prasad raised alarm.

25. Though the first information report in respect of any offence can be lodged by any person, however, we cannot be oblivious of the fact that P.W.-1, Ambika Prasad is a Gram Pradhan of the village concerned. The written report, Ext. Ka-1 itself states that Smt. Rani, wife of the co-accused, Bhulai Kurmi was also present

at the place of the occurrence. Although there is no mention of presence of Haridwar, brother of the deceased, however, he has been examined as P.W.-2, who has stated that he also reached at the place of occurrence when he heard alarm raised by P.W.-1, Ambika Prasad and saw that the co-accused, Bhulai Kurmi had caught hold of the deceased, Kanhaiya Lal whereas the appellant, Jodhhan alias Jeevdhan was assaulting him by a Kudal (*spade*). When the appellant, Jodhhan alias Jeevdhan and co-accused, Bhulai Kurmi saw P.W.-1, Ambika Prasad coming towards the place of occurrence they fled away towards north. At this juncture, it is relevant to mention that sofar as Smt. Rani, wife of the co-accused, Bhulai Kurmi is concerned, since she was stated to be having an illicit relationship with the deceased, Kanhaiya Lal, she may have shown reluctance in getting the first information report lodged about this incident. However, we do not find any plausible reason for the first information report not being lodged by P.W.-2, Haridwar, brother of the deceased, Kanhaiya Lal despite being an eye-witness of this incident.

26. We have been able to notice that P.W.-1, Ambika Prasad and P.W.-2, Haridwar have broadly supported the prosecution case. However, in the written report, Ext. Ka-1, which was scribed by Uma Shankar Upadhyaya on the dictation of P.W.-1, Ambika Prasad, there is no mention that P.W.-2, Haridwar was also

present at the place of occurrence and he also witnessed this incident.

27. Insofar as P.W.-2, Haridwar is concerned, we are of the considered view that he was introduced as an eye-witness by the prosecution subsequently, who, being brother of the deceased, Kanhaiya Lal, is apparently a related witness, therefore, his testimony needs to be scrutinized carefully by this Court. In this regard, judgment of Hon'ble the Supreme Court in **Dahari and others vs. State of U.P.** reported in **AIR 2013 SC 308** may be usefully referred to.

28. P.W.-3, Lallan S/O Gaya Prasad, in his examination-in-chief, has stated that he saw the appellant, Jodhhan alias Jeevdhan and co-accused, Bhulai Kurmi assaulting the deceased, Kanhaiya Lal, which ultimately resulted in his death. He has also stated that while fleeing away from the place of occurrence, the co-accused, Bhulai Kurmi had also assaulted his wife, Smt. Rani.

29. We have also noticed that P.W.-3, Lallan, in his cross-examination, has categorically stated that P.W.-1, Ambika Prasad and P.W.-2, Haridwar had reached at the place of occurrence together. When they reached at the place occurrence, the dead body of the deceased, Kanhaiya Lal was lying there and the assailants had already fled away from the place of occurrence. P.W.-1, Ambika Prasad, Gram Pradhan is

said to have stated that the report should be lodged against the co-accused, Bhulai Kurmi and the appellant, Jodhhan alias Jeevdhan.

30. If we scrutinize the testimonies of P.W.-1, Ambika Prasad, P.W.-2, Haridwar and P.W.-3, Lallan together, it would come out that in the written report, Ext. Ka-1 which was written on the dictation of P.W.-1, Ambika Prasad, Gram Pradhan, P.W.-2, Haridwar, brother of the deceased, Kanhaiya Lal was not shown to be present. However, when Haridwar, brother of the deceased was examined as P.W.-2, he has stated that he also witnessed this incident and he was present at the place of occurrence on 29.05.1998. He has stated that because he was disturbed due to this incident, he did not himself lodge the first information report.

31. If we take the aforesaid explanation to be plausible on its face value, it is difficult for us to reconcile the fact that the presence of an eye-witness, that too real brother of the deceased, Kanhaiya Lal was not mentioned in the written report, Ext. Ka-1. This omission lends support to the argument of the learned Amicus Curiae for the appellant that the introduction of P.W.-2, Haridwar was an afterthought by the prosecution.

32. A close scrutiny of entire testimony of P.W.-3, Lallan reveals that the prosecution witnesses, namely, P.W.-1, Ambika Prasad, P.W.-2, Haridwar and P.W.-3,

Lallan had reached at the place of occurrence when the deceased, Kanhaiya Lal was already dead and the assailants had fled away from the place of occurrence. Therefore, by implication, this means that according to P.W.-3, Lallan also, P.W.-2, Haridwar, brother of the deceased had also not witnessed this incident.

33. As stated above, the prosecution has tried to project the motive for committing this offence as an illicit relationship between Smt. Rani, wife of the co-accused, Bhulai Kurmi and the deceased, Kanhaiya Lal. However, Smt. Rani, wife of the co-accused, Bhulai Kurmi was not examined by the prosecution and when she was ultimately examined as D.W.-1, in her testimony, she has stated that she did not witness this incident as she had not gone towards the place of occurrence on the said fateful day. Even otherwise, the prosecution witnesses, namely, P.W.-1, Ambika Prasad, P.W.-2, Haridwar and P.W.-3, Lallan are such witnesses, who only stated that they had only heard about the illicit relationship between Smt. Rani, wife of the co-accused, Bhulai Kurmi and the deceased, Kanhaiya Lal.

34. It is no more *res integra* that it is not the quantity but the quality of the testimony of a particular witness which matters for placing reliance thereon. A conviction can be based on the sole testimony of prosecution witness, provided the testimony of such witness is of unimpeachable nature and the witness is

of sterling character. In this regard, judgment of Hon'ble the Supreme Court in **Namdeo vs. State of Maharashtra** reported in **(2007) 14 SCC 150** may be usefully referred to.

35. What is meant by "sterling" was succinctly dealt with by Hon'ble the Supreme Court in a judgment rendered in **Rai Sandeep @ Deepu vs. State (NCT of Delhi)**³. Paragraph No.22 being relevant is quoted herein below :-

"22 [Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.] . In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should

³ (2012) 8 SCC 21

not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should

match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

(emphasis supplied)

36. As discussed above, absence of name of P.W.-2, Haridwar, brother of the deceased at the place of occurrence in the written report amply demonstrates that he was not a witness to this incident. However, for reasons best known to the prosecution, he was subsequently introduced as an eye-witness to this incident. P.W.-3 Lallan has clearly stated that when he reached at the place of occurrence along with P.W.-2, Haridwar, the deceased had already died and the assailants had already fled away from the place of occurrence. Therefore, the only conclusion which can reasonably be drawn is that perhaps none of the prosecution witnesses including P.W.-1, Ambika Prasad, P.W.-2, Haridwar and P.W.-3, Lallan had seen this offense being committed by the appellant, Jodhhan alias Jeevdhan. The learned trial Court, while placing reliance on the testimony of P.W.-1, Ambika Prasad, P.W.-2, Haridwar and P.W.-3, Lallan without appreciating the aforesaid facts, appears to have fallen in error.

37. Learned trial Court appears to have been influenced by the fact that there was recovery of Kudal (spade) from the possession of the appellant, Jodhhan alias Jeevdhan, which was proved as Ext. Ka-17 by the prosecution.

38. In this regard, it is apposite to refer to a judgment rendered by Hon'ble the Supreme Court in **Boby vs. State of Kerala** reported in **(2023) 15 SCC 760**, wherein Hon'ble the Supreme Court in paragraphs no.29 and 30 has held as under :

"29. It could thus be seen that Section 27 of the Evidence Act requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to the said fact. The information as to past user, or the past history, of the object produced is not related to its discovery. The said view has been consistently followed by this Court in a catena of cases.

30. This Court in Chandran v. State of T.N. [Chandran v. State of T.N., (1978) 4 SCC 90 : 1978 SCC (Cri) 528] , had an occasion to consider the evidence of recovery of incriminating articles in the absence of record of the statement of Accused 1. In the said case also, no statement of Accused 1 was recorded under Section 27 of the Evidence Act leading to the recovery of jewels. The Court found that the Sessions Judge as well as the High Court had erred in holding that the jewels were recovered at the instance of Accused 1 therein in pursuance of the confessional statement (Ext. P-27) recorded before PW 34 therein. It will be relevant to refer to the following observations of this Court in the said case : (SCC p. 103, para 36)

"36. ... Thus the fact remains that no confessional statement of A-1 causing the recovery of these jewels was proved under Section 27, Evidence Act."

It is thus clear that this Court refused to rely on the recovery of jewels since no confessional statement of the accused was proved under Section 27 of the Evidence Act."

39. Thus, keeping in view the principle of law laid down by Hon'ble the Supreme Court in **Boby (Supra)** regarding the scope of Section 27 of the Indian Evidence Act, if for the sake of argument, we assume that the recovery of Kudal (spade) has been proved by the prosecution, such recovery, per se, does not amount to proof of the fact that the deceased, Kanhaiya Lal was killed by the appellant, Jodhhan alias Jeevdhan on the date of incident i.e. 29.05.1998. The finding of guilt of the appellant, Jodhhan alias Jeevdhan recorded by learned trial Court on the basis of recovery of kudal (spade) from the possession of the appellant is contrary to what has been held by Hon'ble the Supreme Court in **Boby (Supra)** and is, therefore, not sustainable in law.

40. The upshot of aforesaid discussion is that the impugned judgment and order dated 04.10.2002 rendered by learned Additional Sessions Judge/First Fast Track Court, Gonda, whereby it held the appellant guilty for the offence under Section 302 I.P.C., is unsustainable which deserves to be set aside and the present appeal deserves to be allowed.

41. Accordingly, the present appeal is **allowed**. Consequently, the impugned judgment and order dated 04.10.2002 is set aside. The appellant is acquitted of all charges levelled against him.

42. This fact is not disputed that the appellant, Jodhhan alias Jeevdhan has already been released from jail by giving him benefit of remission by the appropriate Government.

43. Hon'ble Supreme Court in the case of **Budh Singh vs. State of Haryana and another, (2013) 3 SCC 742** in para 10 has held as under :-

"10. On a detailed examination and scrutiny of the various dimensions of the question that had arisen in Sarat Chandra case [AIR 1961 SC 334] , this Court upheld the view taken by the High Court and answered the question formulated by it by holding that: (AIR p. 336, para 4)

"4. ... the effect of an order of remission is to wipe out that part of the sentence of imprisonment which has not been served out and thus in practice to reduce the sentence to the period already undergone, in law the order of remission merely means that the rest of the sentence need not be undergone, leaving the order of conviction by the court and the sentence passed by it untouched."

44. In the aforesaid admitted factual background, the appellant need not surrender unless he is wanted in any other case.

45. However, the appellant is directed to file a personal bond and two sureties in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A Cr.P.C. within a period of six weeks from today.

46. Before we part with the case, we expressed our appreciation for the distinguished assistance rendered by Sri Nadeem Murtaza, learned Amicus for the appellant. He shall be entitled to Rs.15,000/- (Rupees Fifteen Thousand) from the High Court as fee for his services.

47. Let the trial court record along with a copy of this judgment be transmitted forthwith to the learned trial Court concerned for information and necessary compliance through fax/ e-mail.

(Ajai Kumar Srivastava-I, J.) (Sangeeta Chandra, J.)

Order Date :- 11.04.2025/Mahesh