

[NON-REPORTABLE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
Criminal Appeal No. 1446 of 2014

Kallu

...Appellant

Versus

The State of Uttar Pradesh

...Respondent

J U D G M E N T

Rajesh Bindal, J.

1. The present appeal has been filed impugning the judgment dated 31.8.2007 of the High Court of Judicature at Allahabad in Criminal Appeal No. 2003/1982 vide which the conviction and sentence of Malkhan, Kallu and Mata Din was upheld.

2. The incident took place on 27.3.1982 at about 3.10 p.m. On account of murder of Durga, FIR was registered against the aforesaid three accused. The Trial Court, vide judgment dated 6.8.1982 convicted them under Section 302 IPC and sentenced to undergo imprisonment for life. The judgment and order passed by the Trial Court was upheld by the High Court.

3. The case of the prosecution is that the son of deceased Malkhan, his grandson Kallu, along with one Mata Din committed murder of Durga. Ram Prasad, Jaila and deceased Durga were sons of Bharose. As per the material available on record, the reason of fight is property dispute. As per the prosecution, on 27.3.1982, Mullu PW-1, Phoola PW-2, and Durga at about 6-7 a.m., had gone to Kavar Haar to cut the crops. They worked in the field till around 11 a.m.-12 p.m.. At around noon, Malkhan, Kallu and Mata Din, accused persons, came there armed with axe and sickle and started cutting crops. On an objection raised by Durga to their cutting the crops, Malkhan struck a blow on his neck by his axe. When Durga fell down, all three accused persons started inflicting blows to the deceased. As a result of the attack, he died. (Post mortem report).

4. Learned counsel for the appellant submitted that there are good reasons to falsely implicate the appellant as the dispute pertains to the ancestral land of the deceased Durga. He has also alleged that Mullu himself has committed murder to usurp entire property. The property in question being ancestral, the appellant being the grandson, was to devolve upon him. For this reason, on a complaint made by Mullu, PW-1, the appellant has also been convicted, otherwise he had no role to play.

5. He further referred to the statement of Smt. Phoola, PW-2, to submit that she was an interested witness. The accused Malkhan & Kallu in the present case were landless labourers. PW-2 was cousin sister of Mullu, PW-1, as well as Malkhan. She wanted to settle in the village for which PW-1 and his father could be helpful and not the accused party. He further submitted that in a dispute related to a case of theft in which PW-2's brother, Jogeshwar, was involved, Malkhan had appeared as a witness against Jogeshwar. She appeared as a witness in the case in hand to settle the score. In view of the aforesaid discrepancies, the conviction and sentence of the appellant cannot be sustained.

6. On the other hand, learned counsel for the State submitted that it is a case in which brutal murder of Durga was committed by none other than his son and grandson/appellant along with Mata Din, on whose field Malkhan was working. The root cause of the dispute was that the accused wanted to settle the score for the reason that the deceased allegedly did not give 2 bigha land as agreed in the Panchayat. This is an eye-witness account. In the presence of PW-1, son of the deceased, Malkhan had given an axe blow on the neck of deceased who fell on ground and thereafter all the three accused beheaded the deceased Durga and severed head was thrown by them away

from the body. Thereafter they fled towards Chatela jungle. PW-1 withstood the cross-examination. PW-2, Phoola was also an eye witness to the offence. She had also withstood her stand in cross-examination.

7. Heard learned counsel for the parties and perused the paper book.

8. The ground raised by the appellant to challenge his conviction is that he has right in the ancestral property. His argument is that on account of this fact, he has been falsely implicated in this case. However, the material which has come on record suggests that the appellant along with his father Malkhan, were living away from the family for the last 11-12 years. It is their admitted case that Malkhan was ploughing the fields of other co-accused Mata Din as they had been ousted from the family. The motive of crime was clearly established. It was that the deceased Durga had not given any share in his property to the appellant and his father Malkhan. The statement made by Mullu, PW-1, son of the deceased, who is eye witness to the offence, had withstood the test of cross-examination. It has come in evidence that the deceased had fallen on ground after one blow of axe by Malkhan but still the other accused collectively

assaulted him. It is corroborated from the Post Mortem Report. They even beheaded him and threw his severed head at a nearby place. The manner in which murder of the deceased was committed was gruesome. This shows their intention and criminal bent of mind. It was a daylight murder with direct eye witness account.

9. The argument that Mullu himself had committed murder of the deceased to usurp the property is merely of frustration. It has come in evidence that he was living with the deceased whereas the accused party had a grudge that they had been deprived of their share in the property.

10. Besides that the issue sought to be raised is that PW-2 was an interested witness, hence her statement should not be relied upon. Informant Mullu is not only the son of the deceased but also the real brother of Malkhan and the real uncle of appellant, Kallu. PW-2 Phula is the cousin sister of both Mullu and Malkhan. Therefore, the relationship of Mullu and Phula with the deceased does not affect her credibility. Reference was sought to be made of a case of theft against Jogeshwar, who is the brother of Phula, PW-2. In her cross-examination, PW-2 was put a question that the accused Malkhan had testified against her brother

Jogeshwar. However, it was merely a question put during the cross-examination of PW-2. There is no document placed on record to substantiate the plea that there was any dispute in which accused, Malkhan had appeared as a witness. PW-2, Phula is also an eye-witness of the incident. She also corroborated what was stated by PW-1. There was no variation in the statements made by them.

11. In view of the aforesaid material on record, in our view, no case is made for interference in the present appeal. There is no error in the judgment of the High Court. The appeal is accordingly dismissed. The appellant was released on bail by this court vide order dated 11.7.2014. He should surrender before the trial court within two weeks from today to undergo the remaining period of his sentence.

_____, J.
(Abhay S. Oka)

_____, J.
(Rajesh Bindal)

New Delhi
May 15, 2023

// NR, SS //