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Reserved



HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1090 of 1987

Gayasi and another

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	: A. Rathore, Keshari Nandan Singh
Counsel for Respondent(s)	: A.G.A.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. This criminal appeal has been preferred by the convicts, to wit, Gayasi and Ram Charan, against the judgment and order of conviction and sentence dated 10.04.1987 passed by the learned IIIrd Additional Sessions Judge, Hamirpur in Sessions Trial No. 48 of 1986, State v. Gayasi and Another (arising out of Case Crime No. 52 of 1984), under Section 302/34 IPC, Police Station Kulpahar, District Hamirpur.

2. By the impugned judgment and order, the learned IIIrd Additional

3. The prosecution case, in brief, is that on the basis of a written report dated 11.07.1984 (Exhibit Ka-1) submitted by the informant Bari Bahu (PW-1), a First Information Report dated 11.07.1984 (Exhibit Ka-4) was registered as Case Crime No. 52 of 1984, under Section 302 IPC at Police Station Kulpahar, District Hamirpur, against the named accused persons (appellants herein).

4. According to the prosecution case, the informant Bari Bahu (PW-1) got scribed a written report (Exhibit Ka-1) from Ashok Kumar and filed the same at Police Station Kulpahar, District Hamirpur, stating therein that on 11.07.1984, her son Ramola was sowing groundnut crop in his field situated in the village Jaitpur Har. She had gone there in the afternoon to bring him food. Her son finished his work, took a bath, and ate his meal under the shade of a Banyan tree. She was sitting right there while her son was sleeping on his *safi*. Parsadi S/o Daruva Kachhi and Chhadami S/o Diviya Kachhi, were also sitting there under the shade of Banyan tree. At about 2:00 p.m. in the noon, from her own family/lineage, Gayasi S/o Pyare Kachhi, carrying a *farsa* and Ram Charan S/o Hallu, who is my stepson, carrying a *bhala*, arrived under the Banyan tree. Without saying a word, Gayasi attacked my son Ramola with the *farsa* and Ram Charan attacked him with the *bhala* and killed him. There has been an ongoing enmity between my son, Gayasi in respect of agricultural field and with Ram Charan regarding Mahua trees. The witnesses and I have seen this killing.

5. After registration of the First Information Report against the accused-appellants, Station Officer, Sauki Ram Chaudhary took the investigation of the case into his hands. However, when S.O. Sauki Ram Chaudhary went on training, the investigation of this case was handed over to Sub-Inspector, Jagvir Singh (PW-6). On 11.07.1984, the alleged

were also recovered and taken into custody, and recovery memo was prepared as Exhibit Ka-8.

6. The Investigating Officer prepared the site plan and other necessary police papers. The *panchayatnama* of the deceased Ramola was also prepared as Exhibit Ka-9. Thereafter, the Investigating Officer sent the dead body for postmortem examination. After completing all necessary formalities of the investigation, Investigating Officer Jagvir Singh (PW-6) submitted a charge-sheet against the accused-appellants under Section 302 IPC in the concerned Magistrate's Court.

7. Dr. Ghanshyam Pandey (PW-2) conducted the postmortem examination of the deceased Ramola and prepared the postmortem report. According to Dr. Ghanshyam Pandey (PW-2), the cause of death was shock and hemorrhage resulting from ante-mortem injuries. He opined that the injuries were sufficient to cause death in the ordinary course of nature.

8. Since the case was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court for trial. The learned Trial Court framed charges against the accused-appellants on 04.08.1986 under Section 302 read with Section 34 IPC, to which the accused-appellants pleaded not guilty and claimed trial.

9. In order to substantiate its case against the appellants, the prosecution examined the informant, Bari Bahu (PW-1); Dr. Ghanshyam Pandey (PW-2); Parsadi (PW-3); Ram Charan (PW-4); Jainarayan (PW-5); and the Investigating Officer, S.I. Jagvir Singh (PW-6). Besides the oral testimony, the prosecution relied upon documentary evidence from Exhibits Ka-1 to Ka-13, to establish its case.

10. The learned Trial Court, after recording the evidence of the

1), had registered a false case against them and all the prosecution witnesses have given false evidence against them. Although the accused-appellants stated in their statements recorded under Section 313 Cr.P.C. that they would adduce defence evidence, they did not produce any evidence in their defence.

11. After recording the evidence, the learned Trial Court heard the arguments of the prosecution and the defence. The Trial Court found the accused-appellants guilty of the alleged offence, as such, convicted and sentenced them to imprisonment for life under Sections 302/34 IPC. Aggrieved by the impugned judgment and order dated 10.04.1987, the accused-appellants have preferred the present criminal appeal before this Court.

12. During the pendency of this criminal appeal, appellant no. 2, Ram Charan, S/o Hallu, died. Accordingly, the criminal appeal insofar as it relates to appellant no. 2 has been abated *vide* order dated 06.01.2026. Therefore, the present criminal appeal survives for adjudication only in respect of appellant no. 1, Gayasi.

13. We have heard the arguments of Mr. Keshari Nandan Singh, learned Counsel for the surviving appellant, Gayasi, and Mr. Deepakh Kapoor, learned Additional Government Advocate, appearing on behalf of the State. We have also perused the evidence on record as well as the impugned judgment and order of conviction and sentence dated 10.04.1987, passed by the learned IIIrd Additional Sessions Judge, Hamirpur.

14. Learned counsel for the surviving appellant, Gayasi, has submitted that the Trial Court wrongly relied upon the evidence of the informant, Bari Bahu (PW-1), who is the mother of the deceased Ramola, and the

is the real uncle of the deceased and appellant No. 2, Ram Charan S/o Hallu. Another prosecution witness, Ram Charan (PW-4), S/o Ram Dayal, testified regarding the recovery of the alleged murder weapons i.e. *farsa* and *bhala*. All these prosecution witnesses are thus closely related by blood to the deceased Ramola and appellant No. 2, Ram Charan (now deceased). Learned counsel for the appellant has vehemently submitted that there is no independent witness to substantiate the prosecution story.

15. It is next argued that the prosecution witnesses in this case are highly related witnesses, being family members of the deceased, and according to settled principles of law, the testimony of interested or close relatives cannot be relied upon without independent corroboration. However, the Trial Court failed to consider this aspect in its findings. The Trial Court also wrongly relied on the evidence of the recovery witness, Ram Charan (PW-4), S/o Ram Dayal. It is next submitted that the findings and reasoning given by the Trial Court are contrary to the settled principles of law and are liable to be set aside. The Trial Court convicted the accused-appellants primarily on surmises and conjectures, without any cogent or reliable evidence.

16. Learned counsel for the surviving appellant, on the basis of above submissions, has contended that the prosecution failed to prove its case beyond reasonable doubt. Accordingly, the impugned judgment and order of conviction and sentence dated 10.04.1987 is liable to be set aside, and the present criminal appeal filed by the appellant is liable to be allowed.

17. *Per contra*, learned Additional Government Advocate has submitted that the findings and reasoning recorded by the learned Trial

Bahu (PW-1), and Parsadi (PW-3), finds support and corroboration from the medical evidence, including the postmortem report of the deceased, Ramola, prepared by Dr. Ghanshyam Pandey (PW-2).

18. Learned A.G.A. further contended that the oral evidence of the prosecution is fully corroborated by the medical evidence. Accordingly, the learned Trial Court, after a proper appreciation of all the prosecution evidence in accordance with law, recorded the conviction of the accused-appellants. It is next submitted that the findings and reasoning of the Trial Court are based on both ocular and medical evidence, which support and corroborate each other. There is no perversity or illegality in the findings or reasoning given by the Trial Court. Therefore, the criminal appeal filed by the accused-appellants is devoid of merit and is liable to be rejected.

19. In view of the above arguments and counter-arguments advanced by both sides, and from a perusal of the written report (Exhibit Ka-1), we find that the informant Bari Bahu (PW-1), submitted a written report at the Police Station Kulpahar, on the basis of which a first information report was registered on 11.07.1984 at about 15:30 hours, in which the time of the alleged occurrence is mentioned as about 14:00 hours. It is thus amply clear that without any delay after the alleged incident on 11.07.1984 at about 14:00 hours, the informant Bari Bahu (PW-1), lodged the first information report promptly at the concerned police station at 15:30 hours on the same day. This fact shows that without any concoction, consideration, or afterthought, the informant Bari Bahu (PW-1), lodged the first information report immediately after the incident against the named accused-appellants. Thus, we find that in a simple and straightforward manner, the informant Bari Bahu (PW-1), lodged the first information report naturally and without any delay

deceased), was also a son of Hallu, born from Hallu's previous wife. After the death of his previous wife, Hallu married Bari Bahu (PW-1), and the deceased, Ramola, was born from this subsequent marriage.

21. From a perusal of the examination-in-chief of the informant, Bari Bahu (PW-1), it is apparent that she has stated the same facts as written in her written report (Exhibit Ka-1). In a clear and straightforward manner, the informant (PW-1) stated in her evidence that appellant No. 1, Gayasi, had a *farsa* in his hand and appellant No. 2, Ram Charan, had a *bhala* in his hand and that due to enmity regarding agricultural land and Mahua trees, the appellants killed her son.

22. From a perusal of cross-examination of the informant Bari Bahu (PW-1), it is revealed that the PW-1 was previously married to one Munni, and after Munni's death, Hallu took PW-1 as his wife, and deceased Ramola was born from this marriage. The prosecution witness, Parsadi (PW-3), is also brother-in-law of the informant, Bari Bahu (PW-1). During cross-examination by the defence, the informant (PW-1) reiterated the occurrence of the alleged incident in the same manner as stated by her in examination-in-chief.

23. From the evidence of the informant, Bari Bahu (PW-1), we find that she is an illiterate lady, who has affixed her thumb impression on her written report (Exhibit Ka-1) and evidence. Despite her illiteracy, she has narrated the occurrence of the alleged incident in a simple and straightforward manner, without any exaggeration or embellishment. What she witnessed is exactly that she has stated before the Court.

24. We find that the testimony of the informant, Bari Bahu (PW-1), contains no material or major contradiction that would render her evidence unbelievable or unreliable. In other words, she has presented

Accordingly, we are of the view that the testimony of this witness is wholly reliable.

25. Next to PW-1, the other eye-witness of the prosecution is Parsadi (PW-3). The prosecution has examined Parsadi (PW-3) as an eye-witness of the alleged incident, and his name also finds place in the written report (Exhibit Ka-1) as an eye-witness. From a perusal of the evidence of PW-3, we find that he has deposed in the same manner as the informant, Bari Bahu (PW-1). It is further evident from his testimony that he was present at the place of occurrence on 11.07.1984 when accused-appellant Gayasi, armed with a *farsa* and accused-appellant Ram Charan (now deceased), armed with a *bhala*, arrived at the place of occurrence. According to this witness, Gayasi assaulted Ramola with the *farsa* and Ram Charan assaulted Ramola with the *bhala*. As a result of the said assault by the appellants, the victim Ramola, died on the spot. This witness has also stated about the enmity with Gayasi regarding agricultural field and with Ram Charan regarding the Mahua trees.

26. From a perusal of the cross-examination of the eye-witness, Parsadi (PW-3), we find that although this witness has stated that the Investigating Officer recorded his statement after one month of the alleged incident, he has also stated that he could not assign any reason as to why the Investigating Officer did not record his statement earlier. This witness has further stated in his cross-examination that the field in which Ramola was sowing groundnut was in his name, and that no case was pending with any person in respect of that field. He has also stated that he had informed the Investigating Officer that he had gone to the spot for sowing groundnut, and if the Investigating Officer did not record the said fact in his statement, he could not assign any reason for the same.

deposed in a natural and straightforward manner, without any embellishment, concoction, or deliberation. Whatever he witnessed at the place of occurrence has been stated by him before the Court. From a perusal of cross-examination of Parsadi (PW-3), we further find that there is no material or major contradiction of such a nature as would render his testimony doubtful.

28. The testimony of Parsadi (PW-3) corroborates the evidence of the informant, Bari Bahu (PW-1), and the evidence of the informant, Bari Bahu (PW-1), in turn, corroborates the testimony of Parsadi (PW-3). In other words, the evidence of the informant, Bari Bahu (PW-1) and Parsadi (PW-3) mutually corroborate each other. Thus, we find that the prosecution story, as narrated in the written report (Exhibit Ka-1), finds full support and corroboration from the evidence of the informant, Bari Bahu (PW-1) and Parsadi (PW-3).

29. From a perusal of the evidence of the informant (PW-1) and Parsadi (PW-3), it is amply clear that both the informant (PW-1) and Parsadi (PW-3) are eye-witnesses of the alleged incident dated 11.07.1984 occurred at about 14:00 hours, when the accused-appellants attacked and assaulted the deceased, Ramola, with a *farsa* and a *bhala*. These two prosecution witnesses were present at the place of occurrence, however, due to fear for their lives, as the appellants were armed with highly deadly weapons such as a *farsa* and a *bhala*, they could not intervene to save the life of the deceased, Ramola. The prosecution witnesses, namely, the informant, Bari Bahu (PW-1), and Parsadi (PW-3), are thus eye-witnesses of the alleged incident. From a perusal of their evidence, it is evident that they were present at the spot, witnessed the occurrence, and have narrated before the Court what they saw with their own eyes in a simple and natural manner. Accordingly, we find that the

30. The Supreme Court in *State of Rajasthan v. Smt. Kalki And Another; (1981) 2 Supreme Court Cases 752*, has held in paragraph nos. 7 and 8 that:

"7. As mentioned above the High Court has declined to rely on the evidence of P.W.1 on two grounds: (1) she was a 'highly interested' witness because she 'is the wife of the deceased', and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.

8. In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person. As indicated above we have not found any material discrepancies in the evidence of the P. W. 1."

31. The Supreme Court in *G. Laxmanna And Others v. State of Andhra Pradesh; (2002) 8 Supreme Court Cases 333*, has held in paragraph no.10 on the point of related witness that:

32. The Supreme Court in ***Sucha Singh And Another v. State of Punjab; (2003) 7 Supreme Court Cases 643***, has held in paragraph nos. 13 & 23 on the point of related witness that:

"13. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

23. So far as inaction of PWs 9 and 10 in not coming to rescue of deceased is concerned, it has been noted by the trial Court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence."

33. The Supreme Court again in ***Masalti v. State of U.P.; AIR 1965 SC 202***, has held in paragraph no. 14 that:

"14. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. ... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

the actual culprit and falsely implicate the accused. No evidence has been led in this regard."

35. In light of the legal principles laid down by the Supreme Court in the aforementioned cases, it is clear that although the informant, Bari Bahu (PW-1), is the mother of the deceased, Ramola, and Parsadi (PW-3) is the uncle of the deceased as well as the uncle of appellant no. 2, Ram Charan (now deceased), both being sons of Hallu, the said witnesses are related family members. However, merely on the ground that the eye-witnesses, namely, the informant, Bari Bahu (PW-1) and Parsadi (PW-3), are related to the deceased, their evidence cannot be doubted, in view of the law laid down by the Supreme Court in the aforesaid decisions. It is also a natural human conduct that a family member of the victim would not falsely implicate an innocent person, particularly a member of his own family, in a heinous offence like murder.

36. The informant, Bari Bahu (PW-1), and Parsadi (PW-3) are natural witnesses of the incident, who witnessed the occurrence with their own eyes. The inconsistencies pointed out by the appellants during their cross-examination are minor and superficial in nature. The informant, Bari Bahu (PW-1) and Parsadi (PW-3) have fully supported the prosecution case through their testimonies. Their evidence is wholly reliable, and their testimonies are found to be credible and trustworthy.

37. It is also a notable fact that on the fateful day, i.e. 11.07.1984, when the alleged incident occurred, the prosecution eye-witnesses, namely, the informant, Bari Bahu (PW-1), and Parsadi (PW-3), were sitting under the shade of a banyan tree and were unarmed. In contrast, accused-appellant Gayasi was armed with a *farsa* and accused-appellant

eye-witnesses, PW-1 and PW-3, cannot be doubted or discarded. In the light of the above discussions, we find no force in the submissions advanced by the learned Counsel for the surviving appellant.

38. From a perusal of the postmortem report (Exhibit Ka-2), which was prepared by Dr. Ghanshyam Pandey (PW-2), following injuries were found on the body of deceased Ramola:-

(i) Two incised wounds were superimposed on each other and were in the same direction. These were present horizontally on the lower part of the front of the neck. The combined measurement of the wounds was 14cm x 12cm. Everything, including the major blood vessels of the neck and the food pipe (esophagus), was severed. A significant amount of clotted blood was present, and some semi-digested food was also found adhering to the area.

(ii) A punctured wound measuring 1½cm x 1½cm was present on the left side of the abdomen. Inside the abdomen, the loop of the large intestine was ruptured. A large amount of clotted blood was present inside the abdomen. Upon examination of internal part of the cadaver, I found that the heart was empty of blood. Inside the abdomen, there was some fecal matter along with clotted blood. By 'inside the abdomen,' I mean the peritoneal cavity. Other matters were normal. The deceased had been dead for approximately one day.

As per the opinion of Dr. Ghanshyam Pandey (PW-2), the death of the deceased was caused by shock and hemorrhage resulting from injuries sustained prior to death. These injuries were sufficient to cause death in the ordinary course of nature. Injury no. 1 must have been caused by a sharp-edged weapon, such as a *farsa*, and Injury no. 2 by a pointed weapon, such as a *bhala*. It is possible that the said injuries were inflicted around 2:00 p.m. on the date 11.07.1984.

(PW-3), have in a very clear cut manner stated in their evidence that accused-appellant Gayasi assaulted the deceased Ramola with a *farsa* and accused-appellant Ram Charan S/o Hallu assaulted the deceased Ramola with a *bhala*. Due to the said attack by the appellants with deadly weapons like a *farsa* and a *bhala*, the deceased Ramola died on the spot. Thus, we find that the ocular evidence, namely, the evidence of the informant Bari Bahu (PW-1) and Parsadi (PW-3), is supported by the medical evidence of Dr. Ghanshyam Pandey (PW-2). In other words, the medical evidence finds support and corroboration from the ocular evidence of the informant Bari Bahu (PW-1) and Parsadi (PW-3). In this way, the prosecution story finds support from both medical and ocular evidence. The medical evidence corroborates the ocular evidence of the prosecution witnesses, and the ocular evidence supports the medical evidence. Each of them finds support and corroboration from the other.

40. From a perusal of the record, it is evident that on the date of the incident, i.e. 11.07.1984, the police recovered the alleged murder weapons at the instance of the accused-appellants. On the pointing out of accused-appellant Gayasi, a bloodstained *farsa* was recovered, and on the pointing out of accused-appellant Ram Charan (now deceased), a bloodstained *bhala* was recovered from a thick ambush. A recovery memo in respect thereof was duly prepared and exhibited as Exhibit Ka-3. During the course of trial, the said weapons *farsa* and *bhala* were produced before the learned Trial Court at the time of recording the evidence of the Investigating Officer, Jagvir Singh (PW-6), who duly identified and proved the same.

41. Admittedly, the recovery of the aforesaid weapons was not effected in strict compliance with the provisions of Section 27 of the Evidence Act, nor were the said articles sent for forensic examination

Bahu (PW-1), in the written report (Exhibit Ka-1), as well as in her deposition and that of Parsadi (PW-3). In other words, when viewed in the overall factual matrix of the case, the prosecution story finds substantial support from the aforesaid recovery and attendant circumstances.

42. Apart from the above discussions, we have also examined the impugned judgment and order of conviction and sentence dated 10.04.1987 passed by the learned Trial Court and have perused the findings and reasoning recorded by the Trial Court. Upon such perusal, we find that the Trial Court has duly considered and discussed all relevant facts and evidence available on record. The findings have been recorded in the light of the evidence and are supported by well-settled principles of the law of evidence.

43. In our considered opinion, there is no perversity or illegality in the findings and reasoning of the Trial Court. The conclusions have been arrived at in their proper perspective, in accordance with law, and on the basis of the evidence on record. We, therefore, find no ground to interfere with the impugned judgment and order dated 10.04.1987.

44. In view of the above, we find no merit in the arguments advanced by the learned Counsel for the surviving appellant, Gayasi. Consequently, the present criminal appeal is devoid of merit and is liable to be dismissed.

45. Accordingly, the present criminal appeal is *dismissed*.

46. The surviving appellant, Gayasi, is presently on bail. His personal bond stands cancelled, and his sureties are discharged from their liabilities. He is directed to surrender before the learned Chief Judicial Magistrate, Hamirpur, within a period of fifteen days to undergo the

bailable warrant to secure his arrest. Upon arrest, he shall be sent to jail to serve the remaining sentence in accordance with the Trial Court's order dated 10.04.1987.

48. The Chief Judicial Magistrate, Hamirpur, is directed to intimate this Court regarding compliance of this order.

49. Let a copy of this judgment be sent to the learned Trial Court along with the Trial Court record **forthwith**.

(Vinai Kumar Dwivedi,J.) (J.J. Munir,J.)

July 01, 2026

Aditya