**2023 STPL(WEB) 8 SC**
**SUPREME COURT OF INDIA**

(V. RAMASUBRAMANIAN AND PANKAJ MITHAL JJ.)

**MOHD. MUSLIM**

Appellant

*VERSUS*

**STATE OF UTTAR PRADESH (NOW UTTARAKHAND)**

Respondent

Criminal Appeal No. 1089 of 2011-Decided on 15-6-2023

**Murder - Supreme Court Acquits on ground of Benifit of Doubt**

**JUDGMENT**

**Pankaj Mithal, J.-**Heard Mr. Prafulla Kumar Behera, learned advocate appearing for the appellant and Mr. Jatinder Kumar Bhatia, learned Advocateon- Record appearing for the respondent.

2. The two accused appellants, father and son, have preferred this Criminal Appeal against their conviction for an offence under Section 302 of the Indian Penal Code, 1860 (in short "IPC") whereby and whereunder, they have been sentenced to undergo life imprisonment and fine of Rs.20,000/- each. In default of payment of fine, they have been ordered to undergo further six months of rigorous imprisonment.

3. The incident is of 4th August, 1995 which allegedly took place at 09:00 AM within the jurisdiction of Police Station Mangalore. It is said that deceased Altaf Hussain, the father of the informant Salim Ahmad (PW-1), had some land dispute with the accused appellants. They as such had a grudge against deceased Altaf Hussain. In connection with the said land dispute, proceedings were pending before the Consolidation Officer. On the fateful day, deceased Altaf Hussain was going to Roorkee for attending the said proceedings, he was on his bicycle and his son – the informant (PW-1) and his nephew – Irshad (PW-2) were little behind on their cycles and were following him. When deceased Altaf Hussain reached near Bajari Plant on G.T. Road from where Roorkee was only at a short distance of 5 kms, the accused persons armed with "tabal" and "axe" assaulted him. Upon raising an alarm, one Tahir, son of Md. Saddiq and one Md. Afzal (PW-3), son of Niyaz Ahmad came from behind and tried to get hold of the accused persons but they escaped towards the jungle leaving behind their 'loi' (blanket) and cycle at the place of occurrence.

4. On the basis of the written complaint submitted by the informant (PW-1) at around 09:50 AM on 04.08.1995 itself (Exh. Ka-1), a chick FIR (Exh. Ka-8) was registered. The Investigating Officer (PW-7) – Anil Kumar prepared the inquest report (Exh. Ka-4), the site plan (Exh. Ka-13) and took into his possession, one pair of rubber shoes, one pair of slippers, a 'loi' (blanket) and the cycle. The 'loi' and the cycle were alleged to be that of the accused persons and were marked as Exh. Ka-10 and Exh. Ka-11 respectively.

5. Sub-inspector (PW- 5) – Om Veer Singh prepared a letter (Exh. Ka- 5) addressed to the Chief Medical Officer for the purpose of postmortem. The post-mortem was conducted by Dr. Sudhir Kumar

Dhaundhiyal on the next day, i.e., 05.08.1995. The post-mortem report (Exh. Ka-3) was proved by Dr. O.P. Sharma (PW-4) as Dr. Sudhir Kumar Dhaundhiyal who conducted the post-mortem, had died in the meantime.

6. Both the accused persons were arrested by the Investigating Officer on 07.08.1995 and on their pointing out the weapons of crime, i.e., the axe and the "tabal" were recovered and taken into possession vide possession memo (Exh. Ka-14).

7. The Police submitted a chargesheet under Section 302 IPC against the accused persons, i.e., Mohd. Muslim and Shamshad in the Court of Judicial Magistrate, Roorkee. The case was committed to the Sessions Court on 26.10.1995 for trial.

8. The accused appellants were examined under Section 313 of the Code of Criminal Procedure, 1973 (in short "CrPC") and they denied their involvement in the crime rather alleged that no such incident had taken place and that they have been unnecessarily framed as they are new to the village.

9. The Sessions trial ended in the conviction/sentencing of the accused appellants vide judgment and order dated 25.04.1998. The High Court on appeal upheld and confirmed the same. Thus, the present appeal.

10. It may be worth noting that the appeal stood abated against the accused appellant No.2 vide order of this Court dated 16.08.2021. Accused appellant No.1 is now aged about 79 years and has undergone six years of incarceration. He is on bail since 2013.

11. The main plank of the argument from the side of the accused appellant is that there is interpolation in the FIR and that it has been ante-timed. Actually, the complaint / FIR was lodged at 1:50 PM on 04.08.1995 and by overwriting, it has been changed to 9:00 AM. The deceased was accompanied by his son and his nephew, who were following him on their own cycle and were little behind him. None of these two persons tried to save the deceased from the assault of the accused appellants nor took any steps to provide him with any medical aid instead they rushed for the lodging of the complaint which is highly unnatural. There is no independent eye-witness to the incident and that one of the independent witnesses named, i.e., Tahir was not examined. The evidence of another independent witness, i.e., Md. Afzal (PW-3) is contradictory and does not support the case of the prosecution.

12. The FIR (Exh. Ka-8) dated 04.08.1995 is stated to have been lodged at 9:00 AM. The submission of accused appellant is that, in fact, the FIR was lodged at 1:50 PM and it has been ante-timed. We have perused the original of the FIR dated 04.08.1995 from the trial Court record. A bare pursual of the aforesaid FIR clearly shows that there is some interpolation in the time of its lodging mentioned therein. It is evident from naked eye that '1' has been converted into '9' and '5' has been rounded off to make '0' whereas 'PM' has been converted into 'AM'. In other words, 1:50 PM has been changed to 9:00 AM. This is abundantly clear from the FIR and there cannot be two opinions on that. The trial Court is not correct in saying that there is no interpolation and that since 'AM' has been used, it means that the FIR has been lodged in the morning. The Trial Court completely lost sight of the fact that not only the time has been changed but the word 'PM' has also been interpolated and converted into 'AM'. Thus, in our opinion, the FIR has been ante-timed from 1:50 PM to 9:00 AM.

13. The chick FIR report was sent to the Court on 08.08.1995 with the delay of about 4 days. It is worth mentioning that FIR in a criminal case and particularly in a murder case is a vital and a valuable piece of evidence especially for the purpose of appreciating the evidence adduced at the trial. It is for this reason that the infirmities, if any, in the FIR casts a doubt on its authenticity. The FIR in such cases may also lose its evidentiary value. In Meharaj Singh and Ors. Vs. State of U.P. and Ors. *[(1994) 5 SCC 188]*, it

has been opined that on account of the infirmities such an ante-timing of the FIR loses its evidentiary value. Thus, this entitles the accused to be given the benefit of doubt.

14. The reason for ante-timing the FIR is not difficult to comprehend. The prosecution case is that deceased Altaf Hussain was going to the consolidation Court for attending the land dispute. Obviously, if he was going to the Court, it would have been early in the morning before the start of the Court rather than in the afternoon that too in the post-lunch session. In order to justify that deceased Altaf Hussain was going to the Court in the morning, the timing of the FIR has been changed to 9:00 AM. Had the incident occurred in the morning before 9:00 AM, and the police had arrived at the spot at 10:00 AM, the dead body would have been sent to the mortuary immediately thereafter by the afternoon but this has not happened and the dead body of the deceased Altaf Hussain was sent to the mortuary late in the evening by which time it was too late to conduct the post-mortem which had to be postponed for the next day.

15. The post-mortem was conducted on the next day as the corpse was received in the mortuary late in the evening. The reason of receiving the dead body late in the evening itself indicates that the incident must have taken place in the afternoon and not in the morning.

16. It has come on record that the accused appellants on being chased had run away towards the jungle leaving behind their 'loi' (blanket) and cycle. Both these items were recovered by the Investigating Officer and were marked as Exh. Ka-10 and Exh. Ka-11 respectively. None of these two items were produced before the Court and were got identified by the accused appellants. There is no evidence on record which may establish that in fact the said loi and the cycle belonged to the accused appellants. This gives strength to the defence of the accused appellants that they have been unnecessarily roped into the offence and that they were not even present at the site. The presence of the accused appellants could have been easily proved by the prosecution, had the above two items recovered from the spot were produced and established to be that of the accused appellants. There is no reason or explanation for not producing the above things in Court or for withholding the same.

17. The deposition of Salim Ahmad (PW-1) reveals that he was at a distance of 20 steps from his father but even then he could not rush to save his father from the assault and could not even caughthold of any of the accused appellants who conveniently escaped through the jungle. It is an admitted fact that immediately on the occurrence of the incident, large number of people have assembled and even then the prosecution was not successful in finding a proper eye witness or any other independent person who could have narrated the entire incident. Salim Ahmad (PW-1), the son of the deceased Altaf Hussain, has stated that the incident had occurred at 9:00 AM and he reached the police station at 9:50 AM and the police came and took away the dead body at 10:00 AM. If he had reached the police station at 9:50 AM, there is no possibility of the written FIR being submitted and registered at 9:00 AM.

18. It is important to refer to the deposition of Irshad (PW-2), the nephew of the deceased Altaf Hussain. He had stated that the police had arrived at the place of incident at 9:30 AM which is contradictory to the statement of Salim Ahmad (PW-1) who has stated that the police had arrived at 10:00 AM. He further states that the Daroga Ji did not enquire anything from him nor recorded his statement whereas the Investigation Officer (I.O.) Anil Kumar (PW-7) has recorded that when he reached the place of the occurrence, he met the complainant i.e. Salim Ahmad (PW-1) and two of the eye witnesses i.e. Md. Afzal (PW-3) and Tahir. He categorically stated he had not met Irshad (PW-2) who was one of the witnesses in the FIR. His statement was recorded by the I.O. after a week on 11.08.1995.

19. The son and the nephew of the deceased Altaf Ahmed were following him on their own cycle but the defence has doubted their presence. The conduct and behaviour of both of them appear to be unnatural inasmuch as, had their father been assaulted in the manner alleged, they would have been the first person to intervene so as to save him, but there is no evidence to indicate that upon seeing the accused appellants

assaulting deceased Altaf Hussain they had rushed to the spot which was hardly at some distance from them rather two other persons came on the spot and tried to save deceased Altaf Hussain upon hearing the alarm raised by them. The son and nephew of deceased Altaf Hussain did not even care to take him to the hospital though one of them went to lodge an FIR, the other did not even feel like staying with the deceased and instead went away to the village. Therefore, the conduct of these two persons amply supports the defence version that they may not be present at the place of event.

20. Md. Afzal (PW-3) simply stated that he and Tahir were on one scooter and saw two persons assaulting a person. They upon hearing the alarm raised by Salim Ahmad (PW-1), Irshad (PW-2) tried to save and catch-hold of the culprits. In the same breath he states that the accused appellants escaped and that when they reached the spot, they saw the deceased Altaf Hussain lying on the road and was not breathing. They made no effort to touch him and to find out if he is dead or alive or even to turn him upside down. The above statement, if not self-contradictory, casts the doubt on the version of the said witness inasmuch as at one place he says upon hearing the alarm they tried to save the deceased Altaf Hussain and catch-hold the accused appellants but then states that when they reached the spot the deceased Altaf Hussain was already lying on the road dead.

21. Apart from the above two persons, there is no independent witness to the incident. The other eye witness to the incident was Tahir, who came on the spot and tried to save deceased Altaf Hussain but he was not asked to come into the witness box and depose about the incident. Md. Afzal (PW-3) who was accompanying Tahir though examined as an eye witness but failed to divulge anything material regarding the alleged assault or that the accused appellants were the persons who assaulted the deceased Altaf Hussain.

22. In view of all that has been said above, we are of the view that the prosecution failed to prove to the hilt that the accused appellants were the persons involved in the assault and death of the deceased Altaf Hussain.

23. The totality of the facts and circumstances especially the unnatural behaviour and conduct of the son and nephew of the deceased Altaf Hussain, ante-timing of the FIR and that the 'loi' (blanket) and the cycle (Exh. Ka-10 and Exh. Ka-11) alleged to be that of the accused appellants left behind at the site of the incident were not produced before the Court, compels us to doubt the presence of the son and nephew of the deceased Altaf Hussain at the site. Thus, in the absence of any credible eye witness to the incident and the fact that the presence of the accused appellants at the place of incident is also not well established, we are constrained to accord benefit of doubt to both the accused appellants.

24. Even if we ignore certain other minor discrepancies in the oral evidence, the delay in conducting the post-mortem, the difference in the name of the weapons of crime, i.e., "tabal" or "palkati" which are more or less similar types of instruments for cutting crops, etc., it is a case where the prosecution has miserably failed to prove that the accused appellants have committed the offence beyond any reasonable doubt.

25. In view of the above, the judgment and orders of the Courts below i.e. Addl. Sessions Judge, Roorkee dated 25.04.1998 and High Court of Uttarakhand dated 10.09.2010 are accordingly set aside and the accused appellant No.1 is acquitted by giving the benefit of doubt.

26. The appeal is allowed.

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