

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**LUCKNOW BENCH, LUCKNOW**

**A.F.R.**

Reserved on 01.11.2022

Delivered on 13.01.2023

**Court No. - 1**

**Case :- JAIL APPEAL No. - 1545 of 2019**

**Appellant :- Minni @ Meena**

**Respondent :- The State of U.P.**

**Counsel for Appellant :- Mr.Anurag Shukla (Amicus)**

**Counsel for the State :- Additional Government Advocate**

*And*

**Case :- JAIL APPEAL No. - 1546 of 2019**

**Appellant :- Balram**

**Respondent :- The State of U.P.**

**Counsel for Appellant :- Mr. Anurag Shukla (Amicus)**

**Counsel for the State :- Additional Government Advocate**

**Hon'ble Ramesh Sinha,J.**

**Hon'ble Mrs. Saroj Yadav,J.**

**(The judgment is pronounced in terms of Chapter VII Sub-rule (2) of Rule (1) of the Allahabad High Court Rules, 1952 by Hon'ble Ramesh Sinha, J.)**

**Per Mrs. Saroj Yadav, J for the Bench**

1. These criminal appeals have been preferred from the jail by the appellants/convicts Minni @ Meena and Balram against the judgment and order dated 19.06.2019 passed by Additional Sessions Judge, Court No.5/ Special Judge, Gangsters Act, Lucknow in Sessions Trial No.79 of 2010 arising out of Crime No.349 of 2009, under Sections 302/34 of the Indian Penal Code 1860 (in short IPC), Police Station Mall, District Lucknow,

whereby the convicts/appellants have been held guilty under Section 302/34 of I.P.C. and sentenced for life imprisonment coupled with a fine of Rs.25,000/- each and in default of payment of fine further imprisonment of six months.

2. The facts in short, necessary for disposal of these appeals are as under:-

(i) A First Information Report (in short F.I.R.) was registered at Case Crime No.349 of 2009, at Police Station Mall, District Lucknow on the basis of written report presented by Siyapati. It was stated in the written report that on 17.10.2009 at about 7:00 P.M. he went to meet her father Lallu and mother Lalain in the village Badkhorwa. As soon as she entered through door she saw that her younger sister Minni and her husband Balram assaulted and killed her parents with a trowel (khurpi) and they ran away from the house as soon as they saw her. She raised alarm and some people of the village came there, and they also saw Minni and Balram running. Her younger sister Minni and her husband Balram killed her parents for money and property. The dead bodies were lying at the spot.

(ii) After investigation chargesheet was submitted in the Court against the appellants/convicts under Section 302/34 of I.P.C. The concerned Magistrate after taking cognizance on the chargesheet committed the case to the Court of Sessions for trial which was registered as Sessions Trial No.79 of 2010. The learned Sessions Judge transferred the case for trial to the Court of Additional Sessions Judge, Court No.5/ Special Judge, Gangsters Act, Lucknow. The Additional Sessions Judge, Lucknow framed charge under Section 302/34 of IPC. The appellants/convicts denied the

crime and claimed to be tried.

(iii) The prosecution examined following witnesses to prove its case:-

(a) P.W. 1 Siyapati the complainant.

(b) P.W. 2 Pohkar husband of Siyapati the complainant.

(c) P.W. 3 Dr. P.K. Dwivedi, who conducted postmortem examination on the cadavers of both the deceased.

(d) P.W. 4, Sub Inspector Avadhu Prasad Azad who conducted the inquests of both the deceased on the direction of Station House Officer of the Police Station concerned.

(e) P.W. 5, Suraj Bhan Singh Head-Moharrir who registered FIR and prepared Chick FIR Exhibit Ka-13 and Kayami Nakal Report Exhibit Ka-14.

(f) P.W. 6, Sub Inspector Gauri Shankar Pal, Investigating Officer of the case.

(iv) Apart from above oral evidences following documentary evidences were also proved and exhibited as Exhibit Ka-1 to Ka-25:-

(1) Exhibit Ka-1, written report.

(2) Exhibit Ka-2, inquest report of deceased Lallu.

(3) Exhibit Ka-3 inquest report of deceased Lalain.

(4) Exhibit Ka-4 wrongly mentioned due to clerical error as written in the judgment.

(5) Exhibit Ka-5 postmortem report of deceased Lallu.

(6) Exhibit Ka-6 postmortem report of deceased Lalain.

(7) Exhibit Ka-7 Chalan 'Nash' of deceased (Lallu).

(8) Exhibit Ka-8 Photo 'Nash' of deceased Lallu.

- (9) Exhibit Ka-9 specimen seal related to deceased Lallu.
  - (10) Exhibit Ka-10 Chalan 'Nash' of deceased (Lalain)
  - (11) Exhibit Ka-11 Photo 'Nash' of deceased Lalain.
  - (12) Exhibit Ka-12 specimen seal related to deceased Lalain.
  - (13) Exhibit Ka-13 Chick FIR.
  - (14) Exhibit Ka-14 Nakal report.
  - (15) Exhibit Ka-15 Site Plan.
  - (16) Exhibit Ka-16 recovery memo of collection of plain and blood stained soil from the spot.
  - (17) Exhibit Ka-17 recovery memo of Saree of accused Minni.
  - (18) Exhibit Ka-18 recovery memo of recovered weapon of crime trowel (Khurpi).
  - (19) Exhibit Ka-19 recovery memo of blood stained Shirt and vest of accused Balram.
  - (20) Exhibit Ka-20 site plan of the places of recovery of Khurpi, blood stained shirt and vest.
  - (21) Exhibit Ka-21 site plan of the place of recovery of Saree of accused Minni.
  - (22) Exhibit Ka-22 Chargesheet.
  - (23) Exhibit Ka-23 Forensic Science Lab report regarding plain and blood stained soil.
  - (24) Exhibit Ka-24 Forensic Science Lab report regarding plain and blood stained soil.
  - (25) Exhibit Ka-25 Forensic Science Lab report regarding the recovered clothes of accused persons and weapon of offence.
- (v) After close of prosecution evidence, the statements of the appellants/convicts under Section 313 of the Code of Criminal Procedure 1973 (in short Cr.P.C.) were recorded, wherein they denied crime and stated

that witnesses have deposed falsely. They have also stated that they have been implicated in the crime due to enmity. The convict/appellant Minni has further stated that her parents did not allow her sister (complainant) and her husband to come to their house, because they used to sell liquor. Her parents wanted to give all the property to her, but she denied and told them that after their death both the sisters would get equal shares. When she was imprisoned her sister had sold the land and also got the house constructed. It is wrong to say that she (her sister) used to live for some period with parents and for some period in her matrimonial home, because her parents did not allow her to come to their house. Her sister sold all the land of her father. She further stated that she did not commit any crime. She was arrested from her matrimonial home. The convict/appellant Balram has also stated that he was not present in the village at the time of incident as he was in Lucknow.

(vi) In their defence convicts/appellants examined D.W. 1 Dr. Rakesh Kumar, Physician Community Health Center, Haidargarh.

(vii) After completion of evidence, learned trial court after hearing the arguments of both the sides and analyzing the evidences available on record reached at the conclusion that convicts/appellants Minni and Balram committed the murders of Lallu and Lalain, the parents of Minni and in-laws of Balram. The learned trial court relied upon the evidences of Siyapati and Pohkar and also on the recovery of blood stained clothes of both the accused and the recovery of weapon of offence trowel (Khurpi). Learned trial court concluded that the prosecution has proved the case beyond all reasonable doubts and held both the convicts/appellants guilty

under Section 302/34 of I.P.C. and sentenced them for life imprisonment coupled with a fine of Rs.25,000/- each and in default of payment of fine further imprisonment of six months.

(viii) Being aggrieved of this conviction and sentence, the present appeals have been preferred by the convicts/appellants.

(3) Heard Mr. Anurag Shukla, learned Amicus Curiae for the convicts/appellants and Mr. Dhananjay Kumar Singh, learned Additional Government Advocate for the State-respondents.

(4) Learned Amicus Curiae Mr. Anurag Shukla argued for the appellants that FIR is ante-timed. The police reached at the spot first, thereafter FIR was lodged in consultation with police. The presence of the alleged eye-witnesses i.e. P.W.1 and P.W.2 at the spot is highly doubtful as they were residents of another village situated at a distance of 1Km from the village of incident. Recovery of trowel and blood stained clothes is fake. This recovery has been planted and forged by the police to create evidence. P.W.1 Siyapati has said in her statement before the trial court that two trowels were there at spot, but the Investigating Officer has said that only one trowel was recovered and that too not from the spot, but from somewhere else. He further argued that alleged motive has not been proved because there was very small piece of land in the ownership of the deceased persons and after their death both the sisters would have inherited in equal shares. The statements of P.W.1, P.W.2 and P.W.6 and the Investigating Officer are contradictory. The alleged recovery cannot be used as evidence against the convicts/appellants under Section 27 of the Indian Evidence Act as that has not been recovered from their possession or at their pointing out.

He further submitted that the evidence produced by the prosecution is highly unreliable and conviction based on this evidence deserves to be set-aside and the convicts/appellants be freed.

(5) Learned Amicus Curiae relied upon following case laws:-

**a. Sunil Kundu and another Vs. State of Jharkhand (2013) 4 SCC 422.**

**b. Krishnegowda and others Vs. State of Karnataka (2017) 13 SCC 98.**

**c. Puran Singh Vs. State of Uttaranchal (2008) (3) SCC 795.**

**d. Mani Ram and others Vs. State of U.P. 1994 Supp (2) SCC 289.**

**e. Bhikari Vs. State of U.P. AIR 1966 SC 1.**

(6) On the other hand Shri Dhananjay Kumar Singh, learned A.G.A. countered the arguments made by the learned Amicus Curiae and submitted that P.W.1 and P.W.2 are eyewitnesses. They both saw the incident being committed by the convicts/appellants. When complainant Siyapati raised alarm other persons of village also reached there. The weapon of offence trowel was recovered by the police and the stains of blood were found on the trowel. The blood stained saree of Minni was also recovered at her pointing out. The blood stained shirt and vest of Balram were also recovered on his pointing out. In Forensic Science Laboratory report human blood was found on these recovered clothes. There is sufficient evidence to hold the convicts/appellants guilty. Therefore, the trial court has rightly held them guilty and punished accordingly. Hence, the appeal should be dismissed.

(7) Considered the rival submissions and perused the evidences available on record and gone through the case law cited above. As per version of FIR, on the day of incident i.e. 17.10.2009 at about 7:00 pm the

complainant Siyapati went to meet her parents at village Badkhorwa from her matrimonial village Atwathari. As soon as she entered through the door she saw that her younger sister Minni and Balram had killed her parents with trowel. As soon as they (appellants) saw the complainant, they ran away out of the house. When the complainant raised alarm, then people of village came there and they also saw Minni and Balram fleeing. It has also been mentioned in the FIR that appellants killed the deceased in the greed of money and property.

(8) P.W.1 Siyapati has claimed herself as eyewitness of the crime and has stated in her statement given as P.W.1 that the incident occurred on the day of Deepawali at about 7:00 PM when she went to meet her father Lallu and mother Lalain at village Badkhorwa. As soon as she reached at the door she saw inside that her younger sister Minni and her husband Balram who lived in the village Badkhorwa itself, assaulted her parents with trowel and injured them, consequently they died. They both ran away out of the house as soon as they saw her. Thereafter she raised alarm and many persons of the village came there and they also saw Minni and Balram running. She has further stated that appellants have killed her parents for the greed of money and property. She has proved her written report as Exhibit Ka-1 and identified her thumb impression over that. In the cross examination she has stated that her matrimonial home is situated at a distance of 1Km from her paternal house. Her father had two issues one she herself and another her sister, Minni her younger sister. After the death of her parents both the sisters would have inherited half and half share. She has further stated that her father had three Bighas of land at the time of his



death, now only two and half Biswa land is left. She has further stated that her parents had sold the land before their murder, only two and half Biswa land was left over. Now after their death, their house is lying vacant and none is living there.

(9) She has further stated that when the murder of his parents was done in the house of her father only one door was there for entry. She has further stated that she entered the house first and none else has entered the house. When she raised alarm then many people of the village came there. She first saw the appellants coming out of the door when she entered and both the appellants were in the courtyard near the dead bodies of her parents. When they ran away many people of village came there, her husband reached there after ten to fifteen minutes. She was accompanied by ten to twelve people of her matrimonial village because they (appellants) might kill her also, after seeing her alone. Dallaye, Pappu, Jagdish, Jaghatte and Vikas were with her. These all people just accompanied her, they did not have prior knowledge of the incident. The door of her house was open. The people who came from her matrimonial home were standing outside. The people of her matrimonial home and of parental village came inside when she raised alarm and by that time both the accused ran away. She has further stated that she told to the police that Minni was holding the deceased persons and Balram was assaulting and the same was written by her in the FIR. Balram is Raidas by caste and Minni had married him on his own will for that reason parents and she were not happy with Minni and Balram. Minni and Balram used to come to the house of her parents. At the time of incident Balram was wearing the white shirt and pant and tied a

white handkerchief in neck. Her sister Minni was wearing a red colour saree and blouse. Both were holding trowels in their hands and they ran with trowels. She again said that trowel of Minni was left at the spot which was picked up by the police and trowel of Balram was left outside the house and that too was picked up by police. The recovery memo was prepared about the recovery of trowel and she and her husband put their thumb impressions on that recovery memo.

(10) Pohkar the husband of the complainant Siyapati has been examined as P.W.2 and he has stated before the trial court that she alongwith wife Siyapati went to wife's parental house at village Badkhorwa. His wife went ahead as he stopped on the way to urinate, for that reason he remained behind. When he reached at the house he found his wife crying. His wife told that Minni and Balram were cutting his (P.W.2's) mother-in-law and father-in-law with trowel. On this he also started crying and on this village people gathered there and appellants ran away after committing murder. He has further stated that he and villagers saw Minni and Balram running after committing the murders. He also stated that he is resident of village Atwathari and that village is situated at a distance of 1Km from the village of incident. He further stated that the villagers belonging to the village also reached at the spot after hearing the noise. He has further stated that he did not open the door when Balram ran away. The accused persons opened the door and ran away and he saw that his mother-in-law and father-in-law were lying in the courtyard. He did not catch them due to fear. He has further stated that at the place of incident first his wife reached and after five minutes he reached. He saw the accused persons

committing the murders of his in-laws.

(11) P.W.3 Dr. P.K. Dwivedi, conducted postmortem examination of cadavers of the both the deceased. On the cadaver of deceased Lallu he found following ante-mortem injuries:-

1. Lacerated wound 3 cm x 0.5 cm muscle deep present on left side of face 5 cm below left eye, margins, clear-cut, sharp and well defined;
2. Contusion 8 cm X 4 cm present on left side of head just above left ear;
3. Contusion 20 cm X 10 cm present on left side of ear and below left collar bone;
4. Contusion 8 cm X 5 cm present on lateral aspect of right side of abdomen 7 cm above illiac crest;

On opening ecchymosis present underneath above injuries, fracture of left temporal and parietal bone present, underneath the fracture brain meninges and brain lacerated, fracture of 2nd to 6th number rib on left side of chest present, underneath the fracture lung and pleura lacerated, about one litre fluid of clotted blood present in left chest cavity.

In the opinion of Doctor, the death resulted due to shock and hemorrhage as result of ante-mortem injuries as noted above. (Exhibit Ka-5)

(12) In the postmortem examination of deceased Lalain P.W. 3 Dr. P.K. Dwivedi found the following ante-mortem injuries:-

1. Lacerated wound 3 cm x 1 cm present on right side of face 4 cm below left eye, margins, clear-cut, sharp and well defined;
2. Contusion 10 cm X 8 cm present on right side of face and chin;
3. Contusion 15 cm X 10 cm present on right side of forehead just above eyebrow;

4. Contusion 15 cm X 10 cm present on lateral aspect of right side of chest 3 cm below right clavicle;

On opening ecchymosis present underneath above mentioned injuries, fracture of frontal bone present, underneath the fracture brain meninges and brain lacerated, fracture of 2nd to 6th number rib on left side of chest present, underneath the fracture lung and pleura lacerated, about one litre fluid of clotted blood present in left chest cavity.

In his opinion the cause of death was shock and hemorrhage as a result of ante-mortem injuries as noted above (Exhibit Ka-6).

(13) P.W.4 Sub Inspector Avadhu Prasad Azad, who prepared the inquest reports at the direction of Station Houses Officer concerned has proved the inquest reports of deceased Lallu (Exhibit Ka-2) and of deceased Lalain (Exhibit Ka-3). He has also proved the other relevant documents as Exhibits Ka-7 to 12.

(14) P.W. 5 Constable Moharrir Suraj Bhan Singh who has proved the Chick FIR as Exhibit Ka-13 and Kayami Nakal as Exhibit Ka-14.

(15) P.W.6 Sub Inspector Gauri Shankar Pal, the Investigating Officer of the case, he has stated that after taking over the investigation he recorded the statement of witnesses, prepared the site plan of the place of incident at the pointing out of the complainant Siyapati. He has proved the site plan as Exhibit Ka-15. She has also proved that he has collected the blood stained and plain soil from the spot and got prepared the recovery memo by Sub Inspector Arjun Singh. Thereafter he arrested the accused Minni and recorded her statement and recovered the blood stained saree in the presence of witnesses at the pointing out of Minni. He has proved the

concerned recovery memo as Exhibit Ka-17. He further stated that he also arrested accused Balram, recorded his statement and recovered weapon of offence blood stained trowel, blood stained shirt and vest, which Balram gave him taking out from his nursery. He has proved the recovery memo of trowel as Exhibit-18 and of Shirt and Vest as Exhibit-19. He has also proved the site plans of the place of recovery as Exhibit Ka-20 and 21. He has also stated that after completing investigation he submitted chargesheet against the accused persons proved as Exhibit Ka-22. The allegedly recovered trowel was produced before the Court and this witness has identified, as the trowel recovered at the pointing out of the accused Balram. This witness has stated that accused persons told him that they committed the murder of deceased persons by this trowel. In the cross-examination this witness has stated that there is no mention of confession made by the accused in Exhibit Ka-19 i.e. recovery memo of trowel, shirt and vest.

(16) He has further stated that he recovered no trowel from Minni, but there is mention in the column two of Forensic Science Laboratory report that the weapon used by Minni for committing the murder. He further stated that he did not know who sent this weapon. In his cross-examination he has further stated that in the docket prepared by Circle Officer Malihabad, there is mention of weapons of offence recovered from the possession of Minni and Balram from the place of incident and there is no mention in the Forensic Science Laboratory report about the recovery of weapon of offence from the possession of Balram. He further stated that it is true that Circle Officer prepared the docket and sent the same for examination in

Forensic Science Laboratory. There is no mention in the whole investigation that he (Investigating Officer) recovered any trowel, weapon of offence from the possession of Minni.

(17) Upon examining the evidence of all the witnesses in totality it appears that the complainant Siyapati and Pohkar who are claiming themselves as eyewitnesses of the crime were not reliable. Their presence at the place of occurrence is highly unbelievable because as per their version the day of incident was the day of Deepawali festival and they used to reside in another village situated at a distance of 1Km from the village of incident. Both P.W.1 and P.W. 2 have given contradictory statements, as P.W. 1 has stated in FIR that she went to meet her parents at village Bhadkhorwa. There is no mention in the FIR that her husband Pohkar also accompanied her. In her examination in chief, as P.W.1 she has stated that she went to meet her parents and saw that Minni and Balram had assaulted her parents with trowel. They died and they (Minni & Balram) ran away as soon as they saw Siyapati. When she raised alarm many people of village came there and they also saw Minni and Balram running from the place. In the examination in chief she has not stated that she was accompanied by her husband or her husband came there after some time. In cross examination she has stated that after ten to fifteen minutes running of the accused persons her husband reached there. She has also stated that ten to twelve people of her matrimonial home accompanied her (Siyapati) when she went to meet her parents. She has not stated that her husband and she left from the house together, but her husband stopped on the way to urinate and she reached earlier at the house of her parents.

(18) On the other hand, P.W.2 has stated that he alongwith his wife Siyapati went to his in-laws house at village Bhadkhorwa. His wife reached earlier to him as he stopped on the way to urinate. When he reached at the spot he heard the cry of his wife and his wife told him that Minni and Balram were cutting his in-laws with trowels. He has stated that he along with other villagers saw Minni and Balram fleeing. The statements of these two witnesses are contradictory in material terms and create a serious doubt about their presence at the spot. Further more the recovery of weapon of offence is also highly doubtful because P.W.1 Siyapati has stated in her cross-examination that both the trowels i.e. one of Minni and another of Balram were left at the spot and those were taken by the police. On the other hand, the Investigating Officer has stated that he was handed over the trowel by accused Balram from his nursery. In the Forensic Science Laboratory report Exhibit Ka-25 there is mention that the trowel recovered from Minni. These all facts and circumstances create serious doubt about the recovery also. Further there is nothing in the statement of the Investigating Officer that at the time of recovery of alleged blood stained clothes the accused persons told them that they wore the clothes at the time of committing the murder or the weapon allegedly handed over by Balram was used to commit the murders of the deceased persons. There is mention in the statement of Investigating Officer as P.W.2 that Circle Officer prepared docket of recovery of weapon of offence, but that Circle Officer has not been examined before the Court as witness.

(19) On analyzing the evidence, it is evinced that prosecution could not prove the charges framed against the convicts/appellants beyond

reasonable doubt. Hence the impugned judgment and order deserves to be set-aside and both the appeals are **allowed** accordingly. Let the appellants Minni @ Meena and Balram be released from jail, if not required in any other case.

(20) Appellants **Minni @ Meena and Balram** are directed to file their personal bonds and two sureties each in the like amount to the satisfaction of the court concerned in compliance with Section 437-A of the Code of Criminal Procedure, 1973.

(21) Before we part with the case, we must candidly express our unreserved and uninhibited appreciation for the assistance rendered by Mr. Anurag Shukla, *Amicus Curiae* for the convicts-appellants, therefore, we deem it appropriate to direct for payment to Mr. Anurag Shukla, learned *Amicus Curiae* for his valuable assistance as per Rules of the Court.

(22) Office is directed to pay remuneration to Mr. Anurag Shukla, learned *Amicus Curiae* as per Rules of the Court within a month.

(23) Let a copy of this order alongwith original record be transmitted to the trial court concerned forthwith for necessary information and follow up action.

**(Mrs. Saroj Yadav, J.) (Ramesh Sinha,J.)**

**Order Date :- 13.01.2023**

A.K.Singh