

(2000) 04 AHC CK 0010

In the Allahabad High Court

Case No : Criminal Appeal No's. 341, 477 and 491 of 1980

Bahadur alias Raj Bahadur

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2000) 2 ACR 1407 : (2000) 2 UPLBEC 1073

Hon'ble Judges : S.K. Agarwal, J;J.C. Gupta, J

Bench : Division Bench

Advocate : P.N. Mishra, K.N. Dwivedi, Manish Tewari, A.K. Awasthi and V.C. Tewari, for the Appellant; R.V. Gupta and A.G.A., for the Respondent

Judgement

J.C. Gupta, J.—These are three connected appeals arising out of the judgment and order dated 19.2.1980 whereby Appellants Mewa Lal and Shyam Lal in Criminal Appeal No. 491 of 1980 have been convicted and sentenced to imprisonment for life u/s 302, I.P.C. and to undergo two years" R.I. u/s 148, I.P.C. while Appellant Prakash and Raj Bahadur in Criminal Appeal No. 341 of 1980 have been convicted and sentenced to life imprisonment u/s 302 read with Section 149, I.P.C. They have further been convicted and sentenced to two years" R.I. u/s 147, I.P.C. Since all these appeals relate to one and the same incident and arise out of the same judgment, we are disposing of these appeal by this common judgment.

2. The prosecution story as revealed from the F.I.R., in short, is that deceased Gyan Singh was employed with railways and was working in a gang and he used to reside in one of the huts near Baramasi quarters situated near the Harris Ganj Bridge, Along with the deceased Mehndi Hassan, P.W. 3, Daya Shanker, Amar Nath, P.W. 5, Farrukh and Yameen and all the accused also used to work in the same gang. It is said that on 4.2.1979 at about 8 in the morning, some quarrel took place between the deceased and Mewa Lal Appellant in the workshop at the

time of taking attendance on account of some money transaction. Thereupon Mewa Lal's brother accused Shyam Lal threatened Gyan Singh with dire consequences. It is alleged that on 6.2.1979 at about 7 p.m. all the four Appellants Mewa Lal, Shyam Lal, Bahadur alias Raj Bahadur and Prakash along with four unknown persons ambushed Gyan Singh and started assaulting him. Accused Mewa Lal and Shyam Lal assaulted him with knife while their companions used sariya and danda. Gyan Singh fell down on the ground. On the alarm raised by Man Singh, P.W. 2 brother of Gyan Singh, P.W. 5 Amar Nath, Pooran, Farrukh and Yameen were attracted to the scene of occurrence and they witnessed the incident in electric light. Since Gyan Singh had sustained serious injuries, he was removed to Railway Hospital by P.W. 2 Man Singh with the help of persons present there. Dr. K. N. Bhattacharya P.W. 4 medically examined him at 7.45 p.m. and found the following injuries on his person:

(1) Stab wound 3.5 cm. x 1 cm. x abdominal cavity deep over the upper side of abdomen 4 cm. below of xiphoid process of sternum.

(2) Stab wound 4 cm. x 1/4" x abdominal cavity deep over the right side of abdomen 21 cm. below right nipple.

(3) Three incised wounds in the area of 2 1/2 cm. x 1 1/2 cm. over the medical side of middle finger of right hand (palm aspect) each wound was 1.2 cm. x 1.10 cm. x skin deep.

(4) Incised wound 2.5 cm. x 1/4 cm. x 1.4 cm. deep on the lateral side of right eyebrow.

3. The injuries were fresh in duration. Injury report of Gyan Singh is Ex. Ka-5 Gyan Singh was then immediately removed to U.H.M. Hospital in Railway Ambulance where he was declared dead.

4. Man Singh lodged written report Ex. Ka-4 at police station Cantt. on the same evening at 9.15 p.m. Head constable Krishna Kant P.W. 1 prepared check report Ex. Ka-1 and registered the case in the General Diary at serial No. 51, copy of which has been proved as Ex. Ka-2. S.S.I. Ram Swarup Singh as present at the police station when the case was registered. He recorded the statement of Man Singh at the police station and then proceeded to the place of occurrence and prepared site plan Ex. Ka-18. He also collected blood stained and plain earth from the scene of occurrence and prepared memo Ex. Ka-19. After receipt of "jild panchayatnama", he conducted inquest and after preparing necessary papers, dead body of Gyan Singh deceased was sent for post-mortem examination. On the same day he recorded the statements of witnesses Mehndi Hassan and Amar Nath and arrested accused Bahadur. After collecting necessary evidence all the Appellants were charge-sheeted through charge-sheet Ex. Ka-20.

5. Dr. S. N. Pandey, P.W. 6 conducted post-mortem examination on the dead body of Gyan Singh on 7.2.1979 at 3 p.m. The following ante-mortem injuries were found:

(1) Stab wound 3 1/2 cm. ? 1 cm. ? abdominal cavity deep over the left side of abdomen 4 cm. below xyphoid process of sternum.

(2) Stab wound 4 cm. ? 1/4" ? abdominal cavity deep over the right side of abdomen 21 cm. below right nipple.

(3) Three incised wounds in an area of 21/2 cm. ? 11/2 cm. over the medical side of middle finger of right hand (palms aspect) each wound 1.2 cm. ? 1.10 cm. ? skin deep.

(4) Incised wound 3 1/2 cm. ? 1/4 cm. ? skin of right eyebrow margins smooth and skin deep over lateral side, clean cut tailing downwards.

6. In the internal examination, peritoneum was found stabbed underneath injury Nos. 1 and 2. Stomach was also found stabbed under injury No. 1. The abdominal cavity contained about one litre of blood. A cut wound of the size of 4 cm. ? 1.5 cm. in the liver tissues was also found. In the opinion of the doctor death was due to shock and haemorrhage as a result of stab injuries. The post-mortem report has been proved as Ex. Ka-17. In his statement before the Court Dr. Pandey opined that the ante-mortem injuries were possibly caused by knife and the injuries were sufficient in ordinary course of nature to cause the death of deceased.

7. In order to prove its case against the Appellants, prosecution produced 8 witnesses before the trial court. Out of the witnesses produced P.W. 2 Man Singh, P.W. 3 Mehndi Hassan, P.W. 5 Amar Nath are witnesses of fact, P.W. 7 Hubba Lal Chaturvedi was examined to state about the incident which had occurred at the workshop two days before the incident between the deceased and Mewa Lal. This witness however, turned hostile and did not support the prosecution case.

8. Accused persons in their statements recorded u/s 313, Cr. P.C. denied the prosecution allegations. Appellant, Mewa Lal stated that he has been falsely implicated on account of enmity. According to him a wrestling competition was held in the workshop on 26.3.1979 in which Mehndi Hassan had thrown a challenge for a wrestling bout which challenge was accepted by him. This enraged Mehndi Hassan and he said how he could challenge him and since then he started bearing ill-will. Mewa Lal accused also stated likewise. The other two Appellants also denied their presence at the time of occurrence and stated of their false implication. Accused persons, however, did not examine any witness in defence.

9. We have heard Shri P. N. Mishra, learned Counsel appearing for Appellant Shyam Lal in Criminal Appeal No. 477 of 1980, Shri A. K. Awasthi, learned Counsel appearing for the Appellant Mewa Lal in Criminal Appeal No. 491 of 1980 and Shri V. C. Tewari, learned Counsel appearing for Appellants Bahadur alias Raj Bahadur and Prakash in Criminal Appeal No. 341 of 1980.

10. P.W. 2 Man Singh is the real brother of the deceased. He stated of the incident which had occurred between the deceased and Appellant Mewa Lal at

the workshop two days prior to the murder of Gyan Singh. According to him, the said incident occurred in his presence wherein Gyan Singh had given 3-4 hockey blows on Mewa Lal, Whereupon Appellants Shyam Lal and Mewa Lal threatened that they would see him later on. He also stated that on 3.2.1979 he along with his brother were coming back to their home from Hula Ganj and as soon as they reached near the bridge, 8 persons including the four Appellants and four unknown persons came there. Shyam Lal and Mewa Lal were having knife in their hands and rest of them were possessing danda and sariya. Seeing them Gyan Singh started running but he was chased by the assailants and was assaulted in front of Baramasi quarters under electric pole. Accused Shyam Lal and Mewa Lal inflicted knife blows whereupon Gyan Singh fell down and accused persons thereafter withdrew and ran towards railway crossing with their weapons. The incident was witnessed by Mehndi Hassan. P.W. 3, Yameen, Farrukh and Amar Nath, P.W. 5. The accused were identified in the light emanating from the electric pole. He took his brother to railway hospital where he was medically examined by the doctor and then he was sent to U.H.M. Hospital but he could not avail any medical aid as he died in the way. He proved the F.I.R. as Ext. Ka. 4 which he got scribed by Vinod Kumar. In the cross-examination, he stated that at the time of the incident, Bahadur accused was having a danda but he did not use the same. He further admitted that he did not see accused Prakash inflicting any injuries on the deceased. He categorically stated that he did not see any of these two Appellants assaulting the deceased with danda or sariya. When his attention was invited to the averments made in the F.I.R. he stated that since he had seen these accused persons having danda, lathi and sariya, he got it mentioned in the F.I.R. that they also assaulted the deceased.

11. The next witness of fact is P.W. 3 Mehndi Hassan. He has also testified about the previous incident which had occurred between the deceased and Mewa Lal and Shyam Lal at the workshop. Regarding the incident on the date of occurrence he stated that he was coming from platform No. 8 to his house along with his friend Amar Nath and when they were under the Baramasi Bridge they witnessed the incident. This witness also stated that only Shyam Lal and Mewa Lal had assaulted the deceased with knife and accused persons were identified in the light of electric pole.

12. Amar Nath P.W. 5 is another witness of fact. He also stated of the earlier incident of 4.2.1979 which occurred between the deceased and accused Shyam Lal and Mewa Lal at the workshop. This witness has also deposed about the incident in question which he witnessed while going along with Mehndi Hassan. P.W. 3. According to him also, deceased was given knife blows only by Appellants Mewa Lal and Shyam Lal and no danda or sariya blows were inflicted by any other assailant.

13. We have closely examined the evidence of these three witnesses. There was absolutely no reason for any of these witnesses to have deposed falsely against

Appellants Mewa Lal and Shyam Lal. It is true that Man Singh, P.W. 2 is the real brother of the deceased but his presence at the time of incident is not only testified by independent witnesses P.W. 3 Mehndi Hassan and P.W. 5 Amar Nath but the same is also strengthened by the circumstances appearing in the case and the medical evidence brought on record. Merely because he happens to be the brother of the deceased, his testimony, on that ground alone, cannot be brushed aside as that of being an "interested" witness. There was no direct enmity of this witness with the Appellants Mewa Lal and Shyam Lal. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused is somehow or the other convicted either because he had some animus with the accused or for some other reason. Therefore, the mere fact that P.W. 2 Man Singh is brother of the victim will not be sufficient to discard his testimony especially when his presence is also deposed to by two other independent witnesses namely, P.W. 3 Mehndi Hassan and P.W. 5 Amar Nath. The same also finds corroboration from the medical evidence inasmuch as Dr. S. N. Pandey who performed autopsy has stated in clear words that the ante-mortem injuries were possibly caused by knife.

14. Learned Counsel for the Appellants tried to make a capital out of the recital made in the injury report Ex. Ka-5 wherein it was stated that Gyan Singh was brought at the railway institute by Shri Prem Narain son of Bhagwan Deen, peon and it was argued on behalf of the Appellants that had Man Singh been present at the time of occurrence and had taken the victim to railway hospital, his name would have been mentioned in the injury report, instead of Prem Narain. Dr. Bhattacharya, P.W. 4 in cross-examination stated that Prem Narain had brought the victim in a rickshaw but he could not remember if victim was accompanied by other persons also. He further stated that he knew Prem Narain from before and, therefore, he did not ask him whether any relation of victim had also come as he immediately started attending the victim because of his serious condition. It has also come in the statement of P.W. 2 Man Singh that from the place of occurrence, victim was taken to the Hospital by him, Amar Nath, Prem Narain and several others. Prem Narain sat in the same rickshaw in which the victim was carried and he (Man Singh) went to hospital in another rickshaw and they all reached Railway Hospital almost simultaneously. He further stated that when Prem Narain reached the place of occurrence, the incident was already over. Dr. Bhattacharya further stated that when he took the victim Gyan Singh to U.H.M. Hospital in railway ambulance, Prem Narain had not accompanied him and as per the statement of Man Singh he went along with his brother Gyan Singh from railway station to U.H.M. Hospital in the ambulance. In these circumstances, it cannot be said that Man Singh had not accompanied the victim to railway Hospital from the place of occurrence nor we find any cogent reason to doubt his presence at the scene of occurrence merely on the ground that his name does not find mention in the injury report Ex. Ka-5 prepared by Dr. Bhattacharya, P.W. 4.

15. The evidence of the three eye-witnesses is wholly consistent and though they

were put to a lengthy cross-examination but nothing material could come in their statements which may discredit them or make their evidence unworthy of reliance.

16. As regards the motive again, we have on record the evidence of the aforesaid three witnesses. Merely because Hubba Lal Chaturvedi P.W. 7 had not supported the prosecution case and turned hostile, the evidence of these three witnesses cannot be thrown overboard as unreliable.

17. The F.I.R. of the present case was lodged at 9.15 p.m. It is in evidence that from the place of occurrence victim Gyan Singh was first removed to railway hospital where his injuries were examined by Dr. Bhattacharya at 7.45 p.m. From railway hospital the deceased was removed to U.H.M. Hospital where he was declared dead. On coming to know of the death of his brother Gyan Singh, the first informant Man Singh must have taken some time to recover from the grief and shock suffered on account of the murder of his elder brother Gyan Singh who was in his prime youth, being 27 years of age. Man Singh was himself a young boy of 19 years of age. It must have also taken 30 to 40 minutes in the deceased arriving at the U.H.M. Hospital and examined and pronounced dead. In such a situation, he (Man Singh) could not be expected to act like a computer and if the report was lodged at 9.15 p.m. it cannot be said that there was any delay in making the F.I.R.

18. On an examination of the evidence on record and consideration of circumstances appearing in the case, we have no doubt in our mind that Gyan Singh was assaulted with knives at the time and place and in the manner alleged by the prosecution. It has come specifically in the evidence of the witnesses that only Mewa Lal and Shyam Lal had assaulted the deceased with knife. The post-mortem report also indicated that the deceased had sustained stab and incised injuries which could be caused by knives. No other kind of injury was found on his body. It is also established from the evidence on record that both these Appellants had a motive against deceased Gyan Singh. Therefore, we find that so far as Shyam Lal and Mewa Lal are concerned the prosecution case against them has been established beyond all reasonable doubts.

19. Now we come to the case of other Appellants, namely, Bahadur alias Raj Bahadur and Prakash. Against them there is only a general allegation that they along with four unknown persons also participated in the incident and as per the F.I.R. they also inflicted blows on the deceased with danda and sariya. However, all the three witnesses of fact have categorically stated that none of these Appellants who were armed with sariya and danda assaulted the deceased. The post-mortem report also indicated that no injury of any blunt object was found on the deceased. The motive alleged by the prosecution was only against Mewa Lal and Shyam Lal and no motive of any kind whatsoever has been alleged against Appellants Bahadur alias Raj Bahadur and Prakash. There is also nothing on record to indicate that these two Appellants had any interest in common with accused Mewa Lal and Shyam Lal. No other overt act is also assigned to either of

these two Appellants. If these Appellants were present and were armed with lathi and sariya, it does not stand to reason that they would have simply stood as silent spectators throughout the incident. We, therefore, find that it would not be wholly safe to hold these Appellants guilty either u/s 147, I.P.C. or for the murder of Gyan Singh with the aid of Section 149, I.P.C. as it is not established beyond reasonable doubt that they were members of unlawful assembly. Accordingly we extend the benefit of doubt to the Appellants, Bahadur alias Raj Bahadur and Prakash.

20. Learned Counsel for the Appellants Mewa Lal and Shyam Lal also submitted before us that once the case against Bahadur and Prakash is found to be doubtful, the same benefit should be extended to Appellants Mewa Lal and Shyam Lal especially when in the F.I.R. there was a specific allegation that Bahadur and Prakash had also taken part in the assault made on the deceased. We reject this submission of the learned Counsel for the Appellants outright. It is well established that where the prosecution case against acquitted persons is not identical with the convicted accused persons and is distinguishable from them, no benefit can be claimed on the ground of acquittal of co-accused persons. It is also well-settled that the mere fact that evidence of prosecution witnesses is not firm and safe enough to be relied upon with regard to the part assigned to the acquitted accused in the occurrence is no ground to reject it mechanically against other accused also because it is in our experience that the witnesses seldom tell the whole truth and often resort to exaggerations, embellishments and "padding up" to support a story, howsoever, true in the main. It is, therefore, the function of the Court to disengage the truth from falsehood and to accept what on churning carves out to be true, and reject the rest as unwholesome.

21. Placing reliance on the decisions of Apex Court in the cases of Kameshwar Singh v. State of Bihar 1992 ACR 515 and Amar Singh v. State of Punjab 1987 CAR 109, it was argued by the learned Counsel for the Appellants that once the prosecution came with the specific story in the F.I.R. that the deceased was also assaulted by co-accused with "danda" and "sariya", absence of injuries of such weapons in the post-mortem examination should be taken to be a serious conflict between medical evidence and the manner of assault as alleged by the prosecution and accordingly the presence of witnesses who claimed to have witnessed the assault on the deceased becomes doubtful. It is well established that F.I.R. is not a substantive piece of evidence. Substantive evidence is one which is given on oath before the Court in the presence of accused or his counsel. We have already indicated above the relevant evidence of the three eye-witnesses given in regard to the non-user of lathi, danda or sariya and they have clearly specified the role of assault on the deceased by knives at the hands of Appellants Mewa Lal and Shyam Lal only. First informant has also given a satisfactory explanation as to in what circumstances he got it scribed in the F.I.R. that other accused also attacked the deceased with "danda" and "sariya". We have already doubted participation of co-accused Bahadur and Prakash and have further held that their acquittal does not have any effect on the prosecution case

so far as Mewa Lal and Shyam Lal are concerned. In our opinion, the so-called conflict between the ocular testimony and the medical evidence is not such in nature that the benefit sought may be extended to these Appellants. Learned Counsel invited our attention to certain observations made in the aforesaid decisions. We may, however, add that those observations were made in regard to the appreciation of evidence in the facts and circumstances of those particular cases, and they cannot be applied universally in each and every case, though having different set of facts and circumstances.

22. What value should be attained or what weight should be given to the statements of witnesses examined in a case is a question which has primarily to be decided by examining their evidence and their performance during cross-examination and what impression is ultimately created in the mind of the Court by the analysis of their evidence in the context of other facts and attending circumstances appearing in that particular case, Criminal Cases cannot be put in a strait jacket or water tight compartment. Fate of every criminal case depends upon its own facts and the intrinsic worth of the evidence and other material brought on record of that case rather than on what has been said about the witnesses while appreciating the value of their evidence in the other decided cases in the context of facts of those cases. There may appear some similarity in between the facts of the case under scrutiny and the decided cases but there would always be shades of difference and quite often that difference howsoever small, may prove to be crucial and decisive. The same can also be said about the evidence adduced in one case and that brought on record in the other case. For weighing evidence of the witnesses there can be no specific canon and no generalization of principles of appreciation is possible in such matters. Each case has its own features and similarly each witness has his own peculiarities. Therefore, reference to decided cases hardly seems apposite while considering the question whether the evidence of a particular witness in a given case should or should not be accepted. The cases referred to by the learned Counsel for the Appellants have no application to the facts of the present case and are of no help in determining the worth of the evidence of the three prosecution witnesses examined in the present case. The above argument thus is wholly devoid of any merit.

23. It was next argued by the learned Counsel for the Appellants Mewa Lal and Shyam Lal that once participation of accused Bahadur and Prakash and four unknown persons has been found doubtful the Appellants cannot be convicted even with the aid of Section 34, I.P.C. for the offence of murder. This argument of the learned Counsel is also devoid of any force. In the post-mortem examination, a number of knife injuries were found on the deceased. Peritoneum was found stabbed under injury Nos. 1 and 2. A cut wound was also found of the dimension of 4 cm. x 1.5 cm. liver tissue deep and stomach was found stabbed under injury No. 1. Dr. Pandey has categorically stated that the cause of death of the deceased was shock and haemorrhage as a result of ante-mortem injuries and those injuries were sufficient to cause death in the ordinary course of nature.

Accordingly the case would be covered fully by clause thirdly of Section 300, I.P.C. as has been held by the Hon''ble Supreme Court in the case of Virsa Singh Vs. The State of Punjab, . In the present case, an incident had occurred two days prior to the incident in question wherein the deceased had assaulted Mewa Lal with hockey and Mewa Lal and Shyam Lal accused then had given a threat to see Gyan Singh in future. It is in the evidence that at the time of incident both the Appellants came together and both of them were armed with knife. Both of them challenged the victim Gyan Singh and when he started running, both the Appellants chased him and both of them inflicted on his person a number of knife blows causing several injuries including injuries No. 1 and 2 which resulted in serious incision of internal organs. It was not an incident occurring suddenly at a spur of moment in a heat of passion during some altercation, scuffle or grappling between the deceased and the accused persons, on the contrary the evidence on record clearly indicates that the deceased was attacked by both the Appellants Mewa Lal and Shyam Lal under a pre-arranged plan and prior-concert. When the victim fell on the ground as a result of assault made by these Appellants, both of them ran away together in the same direction with their weapons. No doubt is, thus left in our mind that the murder of Gyan Singh was committed by Appellants Mewa Lal and Shyam Lal in furtherance of their common intention and they both are held guilty for the offence punishable u/s 302 read with Section 34, I.P.C. Accordingly they are convicted u/s 302 read with Section 34, I.P.C. instead of Section 302 read with Section 149, I.P.C. and the sentence of life imprisonment is maintained. Their conviction and sentence u/s 148, I.P.C. are set aside.

24. For the reasons stated above Criminal Appeal No. 341 of 80 filed by Bahadur alias Raj Bahadur and Prakash is allowed. Their convictions and sentences under Sections 302/149 and 147, I.P.C. are set aside. They are acquitted of the offences charged for. They are on bail, they need not surrender, their bail bonds are cancelled and sureties discharged.

25. Criminal Appeal No. 477 of 1980 of Shyam Lal and Criminal Appeal No. 491 of 1980 of Appellant Mewa Lal are, however, dismissed with this modification that their conviction u/s 302 is altered to Section 302 read with Section 34, I.P.C. The sentence of imprisonment for life imposed on each of these Appellant is, however, maintained u/s 302/34, I.P.C. Their conviction and sentence u/s 148, I.P.C. are set aside and they are acquitted of this offence. Appellants Mewa Lal and Shyam Lal are on bail, they shall be taken into custody and sent to jail to serve out the sentence as awarded by this Court. A copy of this order shall be sent to C.J.M. concerned for immediate compliance and the C.J.M. shall send the compliance report to this Court within two months from the date of receipt of copy of the order.

26. Accordingly all the appeals are disposed of.

Sri A. K. Awasthi who appeared and argued the appeal as amicus curiae on behalf of Appellant Mewa Lal in Crime Appeal No. 491 of 1980 shall get Rupees

2,100 (two thousand one hundred) as his fee.