

(1996) 02 AHC CK 0137
In the Allahabad High Court
Case No : Criminal Appeal No. 2390 of 1980

Bhola and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 364

Citation : (1996) 20 ACR 571

Hon'ble Judges : N.S. Gupta, J

Bench : Single Bench

Advocate : G.S. Chaturvedi, I.K. Chaturvedi and D.S. Tewari, for the Appellant;
A.G.A. and R.C. Deepak, for the Respondent

Judgement

N.S. Gupta, J.—Bhola, Surendra and Lallu, who were convicted by Sri Bhagwant Prasad, 1st Addl. Sessions Judge, Banda, vide judgment and order dated 14.10.1980 u/s 364, I.P.C. and were sentenced to undergo R.I. for a period of three months each, have come up in appeal before this Court.

2. The prosecution claimed that the accused Appellants Bhola and Surendra are real brothers. Appellant Lallu is their servant. They are all residents of village Fatehpurwa, District Banda.

The victim Chandra Pal and Babu Singh are real brothers. Jabbar Singh is their father.

3. The prosecution claimed that on 18.2.1979, Appellant Bhola duly armed with a revolver, Surendra duly armed with a S.B.B.L. gun and Appellant Lallu duly armed with a S.B.B.L. gun alongwith four unknown persons were responsible for abduction of Chandra Pal, Babu Singh and Jabbar Singh from their tube-well situate in village Baheda, P.S. Kotwali, District Banda with an intention to murder them. The victim Jabbar Singh and Babu Singh were released after an hour or so of their kidnapping. Victim Chandra Pal was released after about 4 or 5 hours of his abduction.

4. The first information report Ex. Ka-1 was lodged by Chandan Singh, brother of the victims Chandra Pal and Babu Singh.

5. The investigation of the case was conducted by S.I. Nankoo Singh P.W. 4.

6. The stand of the accused Appellants before the trial court was that they have been falsely implicated in the case for the reason that they were earlier involved in the murder of the nephew of Ram Gopal Master. The victim and the first informant were close friends of Master Ram Gopal. Accused Bhola was bailed out in the said murder case. The complainant and his family members falsely roped in the Appellants in this case with an intention to get the bail of Bhola cancelled in the said case.

7. After needful trial in the matter, the learned Sessions Judge believed the contention of the prosecution. He convicted and sentenced the Appellants as aforesaid. Hence the appeal.

8. I have heard Sri D.S. Tiwari, learned Counsel for the Appellants and Sri R.C. Deepak, learned A.G.A., for the State, considered their contentions and have gone through the facts and circumstances of the case.

9. Two witnesses of fact, namely, Chandra Pal victim and his Bua Smt. Shankaria were examined as P. Ws. 2 and 3 respectively. I am of the opinion that the evidence of both these witnesses of fact was wholly unreliable and the learned Sessions Judge grossly erred in placing reliance upon the same.

10. It was the own case of the prosecution that as many as three persons, namely, Chandra Pal, Babu Singh who were real brothers, and their father Jabbar Singh were abducted by the accused Appellants and their associates on the point of revolver and guns alongwith 4 other associates, who were not known to the complainant. The accused Appellants themselves released Babu Singh and Jabbar Singh just after an hour of their abduction. They also released the third victim Chandra Pal as soon as his brother Chandan Singh P.W. 1 who was complainant of the case reached home after lodging of the first information report of the occurrence. If it was a fact that the accused Appellants and their associates had really abducted Chandra Pal, Babu Singh and Jabbar Singh with any guilty intention, I am of the opinion that they would not have released them so easily just within hours of the occurrence and further within an hour of the lodging of the first information report without the police being put into motion.

11. The circumstances that since before the occurrence of this case, the accused Appellant Bhola was involved in the murder of Rambishun S/o. Ram Gopal Master in which case he was acquitted and further that he was involved in the murder case of the nephew of Ram Gopal Master and he was close friend of Jabbar Singh and his family members clearly go to show that the real intention of the complainant in lodging the first information report of the kind against the accused Appellants was to harass them, may it be to get bail, etc., cancelled. It is important to note here that no injury of any kind or male-treatment was

meted out to any of the victims by the accused Appellants. It was specifically averred by the complainant Chandan Singh in his cross-examination before the court below that the accused Appellants have not caused any sort of damage to him. That being so, I am of the opinion that the story set up by the prosecution was a cock and bull story. It warrants no credence and surprisingly enough, the learned Sessions Judge believed the same without any reason.

12. In result, I find that the appeal deserves to be allowed.

13. The appeal is allowed. The conviction and sentence passed by the learned Sessions Judge against the Appellants are set aside. The accused Appellants are on bail. They need not surrender. Their bail bonds shall stand discharged.