
(2004) 08 AHC CK 0051
In the Allahabad High Court
Case No : Criminal Appeal No. 639 of 1980

Raghunath Prasad and Others (in Jail) APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

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

Citation : (2005) 1 ACR 104

Hon'ble Judges : Mukteshwar Prasad, J; M.C. Jain, J

Bench : Division Bench

Advocate : P.N. Mishra, S.S. Malik and Brijesh Sahai, for the Appellant; A.G.A., for the Respondent

Judgement

Mukteshwar Prasad, J.—This criminal appeal, by six accused, namely, Raghunath Prasad, Ram Singh, Balak Ram, Net Ram, Ved Ram and Ram Swarup, is directed against the judgment and order dated 25.3.1980 passed by Sri B. K. Misra, the then I Ind Additional Sessions Judge, Shahjahanpur in S.T. No. 280 of 1979, whereby he convicted Raghunath Prasad and Ram Singh u/s 148, I.P.C. and sentenced them to suffer rigorous imprisonment for a period of two years. The remaining four accused were convicted u/s 147, I.P.C. and were sentenced to undergo rigorous imprisonment for a term of one year. All the six accused were found guilty u/s 302, I.P.C. read with Section 149, I.P.C., and were sentenced to suffer imprisonment for life. All the sentences were directed to run concurrently.

2. Briefly stated, the facts of the case giving rise to this appeal are as under:

P.W. 1 Sita Ram, son of Bhikam and Sewa Ram, the deceased, were real brothers. About twenty years ago, Ram Dayal, a co-villager of Sewa Ram, was murdered and Raghunath Prasad and others were prosecuted for committing the murder. One Jeet, who happened to be uncle of Sewa Ram, had appeared as a prosecution witness in the said murder case. Since then Raghunath Prasad and members of his family were annoyed.

3. Accused Raghunath Prasad, Net Ram and Ved Ram are co-villagers of the informant (Sewa Ram). Ram Singh and Balak Ram lived in village Naugawan and Ram Swarup is a resident of village Garriya. All the accused had formed a group.

4. On 23.3.1979 at about sun-set, Sewa Ram was present at his house along with his brother Sita Ram. Accused Ved Ram arrived at the house of Sewa Ram and took Sewa Ram to the fields. Sewa Ram accompanied by Ved Ram, left his house and reached his fields situated towards south of the village. All of a sudden, all the accused except Ved Ram, came out of the wheat field and apprehended Sewa Ram. He was taken to the forest situated south of village Naugawan. Raghunath Prasad and Ram Singh, who were armed with country made pistols fired at Sewa Ram and he sustained firearm injuries. He raised hue and cry. On hearing the alarm raised by the deceased and sound of firing. Ram Singh, son of Khem Karan and Shree Pal, son of Chet Ram, arrived there. When the assailants saw the witnesses, they left the victim and ran away.

5. The informant and his brother could not go to the police station in the night on account of non-availability of the boat to cross Ram Ganga River.

6. Next morning Sewa Ram, the injured, accompanied by his brother Sita Ram and village Chowkidar Nanhey reached police station Paraur, Sewa Ram lodged an oral F.I.R. at the police station at 5.30 a.m. on 24.3.1979. Constable-clerk Suraj Pal Sharma prepared chik report and obtained thumb impression of Sewa Ram thereon. He made entry in the G.D. at serial No. 3.

7. The local police sent the injured to hospital for medical examination. Sewa Ram succumbed to his injuries on the way to hospital. On receipt of the information of the death of Sewa Ram, the local police altered the case u/s 302, I.P.C.

8. S.I. Roop Singh Verma, the then S.O., took up investigation of the case. The Investigating Officer prepared inquest report and other relevant papers for autopsy. He sent the dead body to mortuary for post-mortem examination on 25.3.1979.

9. On 26.3.1979 at 3.00 p.m., P.W. 3 Dr. M. L. Tandon attached to District Hospital conducted autopsy. The deceased was about thirty years old and had expired about 2/1/4 days prior to examination. The deceased had an average built body and the rigor mortis had passed off from both upper and lower limbs.

10. Dr. Tandon found the following ante-mortem injuries:

(1) Gun-shot wound of entry 1.5 cm. ? 1.5 cm. ? abdominal cavity deep on left side abdomen 12 cm. above left anterior superior iliac spine with blackening around the wound and left side of abdomen.

(2) Contusion 4 cm. ? 2 cm. on outer aspect left thigh, 10 cm. below left anterior superior iliac spine.

11. On internal examination, peritoneum underneath, injury No. 1 was found

lacerated. Stomach was perforated from left side in the direction of injury No. 1.

12. In the opinion of doctor, death was caused on account of shock and haemorrhage resulting from ante-mortem injuries.

13. On 25.3.1979, itself Investigating Officer after inspection of the scene of incident prepared site plan. He completed the investigation and submitted charge-sheet against all the six assailants named in the F.I.R.

14. After committal of the case, accused Raghunath Prasad and Ram Singh were charged u/s 148, I.P.C. and the remaining four accused were charged u/s 147, I.P.C. All the six accused were charged u/s 302, I.P.C. read with Section 149, I.P.C. on 19.2.1980.

15. The prosecution in support of its case examined P.W. 1 Sita Ram, who is brother of the deceased, P.W. 2 Ram Singh, who claimed himself to be an eye-witness, P.W. 3, Dr. M. L. Tandon, who conducted autopsy on the dead body of Sewa Ram and P.W. 4 constable clerk Suraj Pal Sharma, who proved chik report, copy of entry in the G.D., inquest report, site-plan and charge-sheet.

16. All the accused in their statements recorded u/s 313, Cr. P.C., totally denied all accusations levelled by the prosecution and attributed their false implication in the case on account of enmity. Accused Ram Singh stated that he took the deceased (Sewa Ram) to the police station from the village as he was wanted in a theft case and had lodged F.I.R. against him. The accused examined Rati Ram, son of Kedar Singh, as a defence witness and filed seven papers, which are (Ex-Kha-1 to Ex-Kha-7).

17. After having considered the entire oral and documentary evidence on record led by the parties and the arguments advanced on their behalf, learned trial Judge found all the six accused guilty and convicted and sentenced them, as noted above. Hence, this appeal.

18. Appellant No. 1 (Raghunath Prasad) expired during pendency of the appeal and the appeal respecting him abated under order dated 12.8.2004.

19. We have heard Sri P. N. Mishra, learned Counsel for the accused-Appellant Nos. A-2 and A-6, Sri B. Sahai, learned Counsel for the remaining Appellants and Sri S. S. Malik, learned A.G.A., for the State and have perused the record carefully.

20. Learned Counsel for the Appellants have assailed the impugned judgment mainly on the grounds that the prosecution story appears to be highly improbable and there was no sense for the deceased to accompany Ved Ram on the impugned date and to go to the fields because he was also a member of the group led by accused Raghunath Prasad. It was urged that Sewa Ram, the deceased and Shree Pal, who is named in the F.I.R. as an eye-witness, were facing trial in the Court at the time of this murder for committing theft at the house of accused Ram Singh and as such, the possibility of false implication of

the accused cannot be ruled out. It was also urged that there is inconsistency between the medical evidence and ocular testimony on record and the doctor who performed post-mortem examination found only one gun-shot wound. The deceased had sustained gun-shot injury in the abdomen and that too from a very close range. He, however, survived for 15-16 hours. He was not provided any medical aid during night. However, he reached the police station early morning situated at a distance of 10 kilometers and lodged oral F.I.R. at 5.30 a.m. This story set up by the prosecution does not inspire confidence. Moreover, there is no eye-witness account and none actually saw any of the Appellants firing at the deceased. Consequently, all the Appellants are entitled to be acquitted and their conviction is not sustainable.

21. On the other hand, learned A.G.A. has supported the judgment under appeal and contended that the appeal is liable to be dismissed.

22. After having given our anxious consideration to the submissions made on behalf of the parties and the material on record, we have arrived at the conclusion that the prosecution could not bring home the charges against any of the Appellants beyond all shadow of doubt and all the Appellants deserve acquittal. As mentioned above, the prosecution examined four witnesses in all. Out of them, P.W. 3 Dr. M. L. Tandon and P.W. 4 constable Suraj Pal Sharma are formal witnesses. Dr. Tandon testified that he had performed post-mortem examination on 26.3.1979 at 3.00 p.m. and in his opinion death had taken place about 54 hours prior to the examination. It means, death of Sewa Ram took place at about 9.00 a.m. on 24.3.1979. Dr. Tandon testified that bleeding must have taken place from injury No. 1 and he could survive for about 16 hours. Moreover, he must have been in a position to speak. Considering the nature and seat of injury which proved to be fatal, we are of the opinion that it is highly doubtful that Sewa Ram could survive for about 16 hours as claimed by Dr. Tandon and as such, it is rendered doubtful that F.I.R. was lodged by him as asserted by the prosecution. It is noteworthy that even first aid was not provided to the deceased and he remained lying throughout the night at his house after sustaining two injuries, including one firearm injury.

23. D.W. 1 Rati Ram testified that Bhikham, father of the deceased and Khetal, father of P.W. 2 Ram Singh, were real brothers and Daal was grandfather of Sewa Ram. According to the F.I.R. itself, the parties were having strained relations since long. Enmity is a double edged weapon and it cuts both ways. According to the F.I.R., Sewa Ram was caught hold by four accused, namely, Balak Ram, Net Ram, Ved Ram and Ram Singh and they took him to forest situated towards south of village Naugawan where accused Raghunath Prasad and Ram Singh fired shots at Sewa Ram and caused injuries. It is noteworthy that only one gun-shot injury was found by Dr. Tandon on the dead body of Sewa Ram. The prosecution version, as contained in the F.I.R., does not stand to reason that four persons were catching hold the victim and two accused fired with their tamanchas. We are not prepared to believe that the Appellants took so much risk in committing

the murder in question. In an incident of shooting, the catching hold of the victim is highly risky.

24. According to the F.I.R., on hearing sound of firing and the hue and cry raised by the deceased, Ram Singh son of Khetal and Shree Pal, son of Chet Ram, arrived there and then the assailants took to their heels. Shree Pal was not produced in the witness box for the reasons best known to the prosecution. P.W. 2 Ram Singh is cousin of the deceased and as such, he is interested witness. We are conscious of the legal position that testimony of an interested witness cannot be discarded outright. The law requires that such testimony has to be scrutinized with great care and caution. According to Ram Singh, he had gone to watch his fields. There was darkness and he saw all the accused discussing some matter with Sewa Ram in the field of Rati Ram. After some time, he heard sound of firing of two shots. He, accompanied by Shree Pal, rushed towards east of the plot owned by Rati Ram. Shree Pal was having a torch. He flashed his torch and in the light of torch they saw all the accused running away towards south. He further added that he saw country made pistols in the hands of Raghunath Prasad and Ram Singh.

25. It will not be out of place to mention that witness had denied his relationship with the deceased and pleaded his ignorance. In cross-examination, the witness disclosed that incident took place after about an hour of the sun-set. It means, there must have been complete darkness in the fields and it was not possible for any body to recognise the assailants who were seen running away after committing the crime. In this view of the matter, the testimony of Ram Singh is not at all convincing and trustworthy and cannot be accepted.

26. P.W. 1 Sita Ram, who is admittedly real brother of the deceased, tried to support the prosecution story. According to him, he was also present at his house when Sewa Ram accompanied Ved Ram and went to see the fields. He further disclosed that after about two hours, he came to know that his brother Sewa Ram was lying in injured condition in the field of Rati Ram and then he was brought home. The witness added that the deceased disclosed to him all necessary facts as well as name of the assailants and the weapons carried by them. In cross-examination, Sita Ram admitted that Raghunath Prasad was acquitted in the murder case of Ram Dayal. The witness further admitted that Sewa Ram was prosecuted for committing dacoity, theft and having illegal weapons in his possession. He was being prosecuted for committing theft in the house of Ram Singh in the month of March, 1979.

27. From the aforesaid scrutiny of the evidence on record, it is crystal clear that there was long standing enmity between the parties. The deceased had a long criminal history and he was prosecuted several times for committing various crimes. The deceased and Shree Pal who was named in the F.I.R. as an eye-witness were facing trial for committing theft at the house of accused Ram Singh and the case was pending in the month of March, 1979 also. In this view of the matter, it can be safely inferred that both the prosecution witnesses (Sita Ram

and Ram Singh) were inimical and interested and as such, it is not safe at all to place reliance on their testimony without corroboration.

28. Dr. Tandon found one contusion also on the left thigh of the deceased. How injury No. 2 was caused to the deceased and by whom has not been explained satisfactorily by the prosecution.

29. In view of the aforesaid scrutiny and analysis of the evidence on record led by the parties, we have arrived at the conclusion that the learned Judge committed error in appreciating the evidence led by the prosecution and he failed to arrive at correct conclusion. In our opinion, the prosecution totally failed to establish its case against any of the Appellants by reliable and convincing evidence. Consequently, we hold that the conviction and sentences recorded against the Appellants are not sustainable and appeal must succeed.

30. In the result, the appeal is allowed. The conviction and sentence recorded against the surviving Appellants are hereby set aside and they are acquitted of all the charges. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged. The appeal has already abated against the Appellant Raghunath Prasad who died during pendency of appeal.