

(2005) 12 AHC CK 0211
In the Allahabad High Court
Case No : Criminal Appeal No. 1725 of 1981

Rahat Ali, Qais Mohad and Ladley

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 02-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 82, 83
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2005) 12 AHC CK 0211

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : A.B.L. Gaur, D.R. Chaudhary and M. Islam, for the Appellant; S.B. Chand and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Mukteshwar Prasad, J.—Three accused namely, Rahat Ali, Qaish Mohammad and Ladley have come up in appeal against the judgment and order-dated 30.7.1981 passed by the then Additional Sessions Judge, Agra in S.T. Nos. 752 of 1978 and 437 of 1979, whereby he convicted the appellants u/s 307 read with Section 34 of Penal Code and each of them was sentenced to undergo rigorous imprisonment for a term of five years.

2. In brief, the prosecution story as unfolded from the record was as under: -

PW 1 Mohammad Taslim was Pradhan of village Nagla Mulla P.S. Matsena Firozabad in the year 1977. On 23.11.1977, at about 5 p.m. Mohammad Taslim, Merajuddin, Noor Khan and Sadaqat Ali were returning to village Nagla Mulla on bicycle from Firozabad. When they arrived at By pass tri-crossing ahead of Inspection House, all the three accused named above, appeared there from behind and exhorted each other to kill Mohammad Taslim. They fired shots at Mohammad Taslim with their respective weapons. As a result of which, he sustained gunshot injuries. Out of three accused, Rahat Ali and Qaish Mohammad were carrying single barrel guns and Ladley was having a Tamancha.

The witnesses took the injured to S.N. M. Hospital, Firozabad where his injuries were examined by PW 4 Dr. R.K.Jain.

3. PW 1 Dr. R. K. Jain examined injuries of Taslim on 23.11.1977 at 6.15 p.m. and found the following injuries: -

1. Gun shot wound of entrance within area 18 cms. X 12 cms. On the left side back, scapular region, seven wounds, average size 1 cms. X 1 cms. X cavity deep (could not be probed), margins are inverted and blackening present around his wounds. Fresh bleeding present (advised X-ray).

2. Lacerated wound 6 cms. X 1.5 cms. x muscle deep on the top of left shoulder. Bleeding present (X-ray).

3. Wound of Exit. Lacerated wound 0.5 cms x 0.5 cm. x cavity deep (could not be probed), Margins are averted, irregular and no blackening present, number of wounds three, within area 10 cms. X 8 cms. on the front of left side chest upper part. Fresh bleeding present (advised X-ray chest).

4. Abrasion 2.5 cm. x 1.5 cm. on the left side back scapular region lower part.

4. All the injuries were fresh at the time of examination and were kept under observation except injury No. 4 which was simple. In the opinion of Dr. Jain, injury nos. 1 and 2 were caused by firearm and injury No. 3 by blunt object.

5. On X-ray, PW 9 Dr. HP. Gautam found fracture.

6. Mohammad Taslim asked Merajuddin to lodge a report at the Police Station. PW 6 Merajuddin prepared a report in his own handwriting and lodged report at the police station Firozabad (North) on the same day at 6.40 p.m. The local police registered a case u/s 307 I.P.C. at Crime No. 575 and started investigation.

7. The case was investigated as usual by PW 8 S.I. V.S. Senger. He interrogated Merajuddin, Mohammad Taslim and Sadaqat, Ali on the same day and after inspection of the scene of incident, prepared site plan. The accused could not be arrested by the police during investigation and proceedings Under Sections 82 and 83 Cr.P.C. were done. After completing investigation, all the three accused were challaned as absconders.

8. After submission of the charge sheet, the accused surrendered in the court below and case was committed to the Court of Session.

9. Accused Rahat Ali and Qaish Mohammad were charged Under Sections 307/34 I.P.C. on 9.3.1979. Accused Ladley was also charged Under Sections 307/34 I.P.C. on 26.11.1979. All the three accused pleaded not guilty to the charge and claimed trial.

10. In order to substantiate its allegations, the prosecution examined nine witnesses in all. They are PW 1 Mohammad Taslim, who sustained injuries in the course of incident, PW 2 S.I. Arun Kumar, who prepared F.I.R. and made entry in the CD on 23.11.1977. PW 3 Noor Khan and PW 7 Sadaqat Ali are said to be

eyewitnesses of the incident and were accompanying Mohammad Taslim on the impugned date. PW 6 Merajuddin is the informant and also said to be an eyewitness, PW 4 Dr. R.K.Jain, Medical Officer at S.N.M. Hospital, Firozabad, who examined the injuries of Mohammad Taslim. PW 5 S.P. Kulshrestha executed the processes issued Under Sections 82 and 83 Cr.P.C. against Rahat Ali and Qaish Mohammad. PW 8 S.I. V.S. Senger is Investigating Officer of the case and PW 9 Dr. Hari Pratap Gautam a Professor in Department of Cardio thoracic, S.N. Medical College, Agra and treated Mohammad Taslim along with other doctors.

11. All the three accused in their statements totally denied accusations levelled against them and pleaded their false implication on account of enmity. Accused Rahat Ali disclosed that he appeared as a prosecution witness in a case u/s 307 I.P.C. against Mohammad Taslim. Qaish Mohammad claimed himself to be the brother-in-law (Sala) of Rahat Ali and pleaded that litigation took place between his uncles Nasiruddin and Alimuddin on the one hand and Taslimuddin on the other.

12. In defence, accused filed some documents, which were not proved.

13. After having considered the entire oral as well as documentary evidence on record led by the prosecution and arguments advanced on behalf of the parties, learned Judge adjudged all the three accused guilty for committing an offence punishable Under Sections 307/34 I.P.C. and each of them was convicted and sentenced, as noted above.

14. I have heard learned counsel for the appellants and learned A.G.A. and gone through the record carefully. It was urged on behalf of the appellants that PW 6 Merajuddin, who lodged the report turned hostile and did not support the prosecution version. According to him, he prepared report on the dictation of an Advocate who was well known to Mohammad Taslim. He admitted himself to be brother-in-law (Sala) of Mohammad Taslim. He, however, gave out that he did not see the incident and prepared report on the dictation of an Advocate at the Police Station at about 9.30 -10.00 p.m.

15. It was next contended that PW 3 Noor Khan and PW 7 Sadaqat Ali, who claimed themselves to be eyewitnesses and are in fact, chance witnesses and they actually saw no incident. There was complete darkness at the time of alleged incident and unknown assailants fired at Mohammad Taslim but the appellants were falsely implicated on account of long standing enmity. Lastly, it was submitted that there is contradiction in the medical evidence and ocular testimony on record. The prosecution failed to furnish any explanation as to how a lacerated wound was caused to Mohammad Taslim on the top of left shoulder. Moreover, Dr. Jain disclosed that injury No. 1 (gunshot wound entrance) could be caused by a shot fired from a distance of 4 feet. Therefore, all the three appellants are entitled to be acquitted.

16. On the other hand, learned A.G.A. has supported the judgment under appeal and contended that besides injured, two independent eyewitnesses supported

the prosecution version and medical evidence also corroborated the eyewitness account and as such, learned trial Judge rightly found all the three accused guilty of making murderous assault, the appeal is liable to be dismissed.

17. After considering the submissions made on behalf of the parties and going through the evidence on record, I am clearly of the opinion that learned trial Judge committed error in appraisal of the evidence on record and he was not justified in convicting the appellants.

18. First of all, I find that PW 6 Merajuddin, who is an eyewitness as per prosecution version and informant did not support the prosecution story and turned hostile. He gave a fatal blow to the prosecution case by saying that he had written the report on dictation of an Advocate at the Police Station at 10 p.m. It means that F.I.R. is not a genuine document and it demolished the entire prosecution story.

19. PW 1 Mohammad Taslim admitted in his examination in chief itself that he appeared as a prosecution witness in a case u/s 302 I.P.C. against Haseen, brother of appellant Ladley and he was sentenced to imprisonment for life. Moreover, as village Pradhan, he got Mohammad Saeed, father of Ladley evicted from the land owned by Gaon Sabha and Ladley and his family bore grudge. He further admitted that Rahat Ali was a prosecution witness in a case against him for making a murderous assault on Mohammad Haseen but he turned hostile. It is, therefore, obvious that the parties were having strained relations since long and were on inimical terms. Enmity is double-edged weapon and it cuts both ways. Therefore, the courts are required to scrutinize the evidence with great caution.

20. PW 1 Mohammad Taslim, the injured supported the prosecution version and testified that on the impugned date at about 5 p.m. he along with Noor Khan, Sadaqat Ali and Merajuddin were going to their village Nagla Mulla on bicycle. When they arrived on Tri-crossing, all the three appellants suddenly appeared there from behind and all fired at him. He was taken to Asifabad Octroi on a Rickshaw and thereafter he was taken to hospital in a mini-bus. The injured disclosed in very clear words that shots were fired at him from a distance of 20-25 steps.

21. PW 3 Noor Khan contradicted the injured and gave out that he was taken to Octroi in the lap and not in Rickshaw. In further cross-examination, Noor Khan gave out contradictory statement regarding weapon with which the assailant were armed. According to him, all the three appellants were carrying guns and no other weapon was used in shoot out.

22. PW 7 Sadaqat Ali who is also named in the F.I.R. as an eyewitness tried to support the prosecution version but failed. According to him, all the three appellants fired at Mohammad Taslim with their respective weapons and after sustaining injuries, Taslim fell down. He claimed himself to be an employee of the Department of Post and became free from his official duty at 4 p.m. This

statement of the witness does not inspire confidence. He too gave out that Mohammad Taslim was taken to Octroi in a rickshaw and they all left their bicycle on the road. Sadaqat Ali too testified that appellants fired at Taslim from a distance of 15-20 steps and out of three shots, one shot hit Mohammad Taslim.

23. After close scrutiny of the evidence on record, I find that the prosecution witnesses have contradicted each other regarding weapon with which the appellants were armed and number of shots which hit the injured. It is also clear that shots were fired at Mohammad Taslim from a distance of about 20 steps and not from a very close range. Dr. Jain found blackening around gun shot wound of entry. It means the shot which hit the injured was fired from a very close range and in any case, not more than three feet. Besides Dr. Jain found one lacerated wound also and there was fracture. This lacerated wound was caused by blunt object. This inconsistency between the medical evidence and ocular testimony was not explained by the prosecution. The prosecution totally failed to give any explanation as to who caused lacerated wound on the top of the shoulder. It is noteworthy that none of the assailants was having a lathi.

24. As mentioned above, admittedly, there was long standing enmity between the parties. Therefore, possibility of false implication of the appellants cannot be ruled out. It appears that unknown assailants made a murderous assault on Mohammad Taslim in the darkness, as suggested by learned counsel for the appellants and appellants were falsely implicated on account of enmity. In my considered opinion, the prosecution version appears to be highly doubtful. It is true that an attempt was made on the life of Mohammad on the fateful day but who actually caused injuries has not been established by the reliable, cogent and convincing evidence.

25. In view of the forgoing observation and discussion of the evidence on record, I hold that the complicity of the appellants in the alleged crime was not established beyond reasonable doubt. The appeal has, therefore, merit and it must succeed.

26. In the result, the appeal is allowed. The conviction and sentence recorded against the appellants are hereby set aside and they are acquitted. They are on bail. They need not surrender. Their bail is cancelled and sureties are discharged.