

(1999) 09 AHC CK 0112

In the Allahabad High Court

Case No : Criminal Appeal Nos. 435 and 1144 of 1979

Ram Dass and Ors.State

APPELLANT

Vs

State,Ram Dass & Ors.

RESPONDENT

Date of Decision : 12-09-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 120B, 302, 307, 34

Citation : (1999) 09 AHC CK 0112

Hon'ble Judges : R.R.K.Trivedi, J and M.C.Jain, J

Final Decision : Allowed

Judgement

M. C. Jain, J.—These are two connected appeals directed against the judgment and order date 2411979 passed by Sri L.N. Rai, the then III Addl. District and Sessions Judge, Budaun in Sessions Trial No. A511 of 1974. By the impugned judgment, the trial Court convicted Ram Dass and Roop Kishore under Section 120B read with Sections 307 and 109 I.P.C. and sentenced each of them to undergo rigorous imprisonment for seven years. The learned Additional Sessions Judge convicted the third accused Kubairaj under Section 302 read with Section 34 I.P.C. and 307 I.P.C. read with Section 34 I.P.C. He was sentenced to seven years rigorous imprisonment under Section 307 read with Section 34 I.P.C. and life imprisonment under Section 302 read with Section 34 I.P.C. Both the sentences were directed to run concurrently. The two other accused Gabbo alias Gajendra Kumar and Hari Om were also simultaneously tried but they were acquitted.

2. Criminal Appeal No. 435 of 1979 came to be filed by Ram Dass, Roop Kishore and Kubairaj who were convicted and sentenced as mentioned above.

3. Criminal Appeal No. 1144 of 1979 was filed by the State against Ram Dass and Roop Kishore for enhancement of their sentence on the ground that they were guilty for criminal conspiracy to commit the offence of murder too, punishable with death. The two appeals are being decided by this common judgment.

4. It may also be stated before proceeding further that Kubairaj happened to die during pendency of the appeal and the same abated against him by order dated 28998. Therefore, presently we are concerned only with the remaining two, namely, Ram Dass and Roop Kishore who are the appellants in Criminal Appeal No. 435 of 19/9 and respondents in Criminal Appeal No. 1144 of 1979.

5. The incident took place on 161172 at about 5.15 p.m. at the house of Brij Ballabh within Police Station Bisauli, District Budaun. The report was made by Brij Ballabh (PW15) on 161172 at 5.40 p.m., the distance of Police Station from the place of occurrence being two furlongs. The case of the prosecution, in its broad essentials as emerged from the F.I.R. and the evidence adduced in the Court, may be set forth. Appellants Ram Dass and Roop Kishore along with one Lotan conspired together for the murder of Brij Ballabh (PW15) who was a sitting M.L.A. from Bisauli Constituency. In consequence of such criminal conspiracy, accused Gabboo and Kubairaj armed with revolvers and Hari Om possessing a black rod (Kala Danda) reached the house of Brij Ballabh (PW15) on 16111972 at about 5.15 p.m. The accused Gabboo first attempted to fire on Brij Ballabh (PW15) with a view to commit his murder, but the shot missed. The deceased Mukesh son of Brij Ballabh (PW15) who was also sitting there along with his father at the Chabutra existing in front of his father's house, pounced upon the accused Gabboo and caught hold of him. Accused Kubairaj then opened fire on Mukesh killing him instantaneously.

6. The background of the incident was said to be that Brij Ballabh (PW15) had been in politics since 1930. He had developed political rivalry and his main rivalry was with one Shri Raj Singh, resident of village Mannu Nagar. The accused were allegedly the supporters of his opponent. Brij Ballabh (PW15) with his supporters and his opponent with his supporters formed two rival factions or groups. The accused Roop Kishore had been closely related or a friend of the other accused Ram Dass, Mathura Prasad and Lotan. Lotan was murdered after this incident and Mathura Prasad met the similar fate earlier thereto. Earlier to the present incident. Lotan had settled the marriage of his daughter in village Jamalpur but subsequently, it was cancelled and then marriage of his daughter was settled with the accused Gabboo with the condition that his enemies (Lotan's enemies) would be finished or murdered. Thus, there was said to be deep rooted enmity or bad blood between Brij Ballabh and his supporters on one hand and the accused on the other. The incident allegedly took place in consequence there of.

7. It may be pointed out that nobody was named in the EI.R., the accused who were tried, figured during the course of investigation. The three of them, namely Kubairaj, Gabboo alias Gajendra and Hari Om were subjected to identification. The accused Ram Dass and Roop Kishore figured as conspirators of this crime along with Lotan (who happened to be murdered after this incident). After conclusion of investigation the accused persons were booked and tried. The case of accused was of denial and false implication.

8. The prosecution examined as many as 29 witnesses, besides relying on

documentary evidence. One Yad Ram Singh had been examined in defence by Kubairaj (who has since died). It may also be stated here that the postmortem over the dead body of the deceased Mukesh was conducted on 17/11/1972 at 11 a.m. by Dr. TC. Sharma (PW14). The deceased was aged about 22 years and had died of gunshot injury. On appraisal of evidence on record, the learned Additional Sessions Judge passed the impugned judgment. The matter is now in appeal preferred by both the sides.

9. We have heard Sri Satish Trivedi, learned Counsel for the appellants in Criminal Appeal No. 435 of 1979 who are the respondents in State appeal No. 1144 of 1979 and the learned A.G. A on behalf of the State in support of the State appeal for enhancement of sentence of Ram Dass and Roop Kishore and in opposition of the appeal filed by them against their conviction and sentence. We have also carefully gone through the evidence and material on record.

10. Ram Dass and Roop Kishore have been convicted under Section 120B, I.P.C. read with Sections 307 and 109, I.P.C. as being conspirators. The factum of bad blood between the two sides from before the incident is borne out from the evidence on record. It is, however, pertinent to point out that nobody was named as accused in the v E.I.R. lodged by the eyewitness Brij Ballabh (PW15). It is also an admitted fact that none of these two persons (Ram Dass or Roop Kishore) was present at the spot at the time of commission of this crime. Assistant Jailer Vishnu Chandra Agarwal (PW19) was posted in District Jail, Lakhimpur in October/November, 1972. His testimony reveals that the present two persons had been lodged in jail on 28/10/72 on having been convicted by the Railway Magistrate under the Railways Act for ticket less travelling and were released from jail after completion of the terms on 25/11/72. The charges foisted against them were sought to be established by branding them as conspirators of the present crime. It may also be pointed out and mentioned here that the enmity is a two pronged weapon. While it may impel one to commit a crime against his opponent, at times it may also propel the opponent to falsely implicate his enemies. Keeping this salutary principle in view and the conspicuous feature of the case that none was named in the F.I.R. and neither of Ram Dass or Roop Kishore was present also at the time of incident, we intend to test the evidence adduced by the prosecution against these two person on the anvil or reliability.

11. The first piece of evidence relied upon by the prosecution against Ram Dass and Roop Kishore is contained in the testimony of Jogram (PW5). He stated that about one month before this incident, he had come to his village from Bisauli. He was going to his house in village Gasai and his way was by the side of the house of Lotan. When he was passing by the house of Lotan in the evening at sunset time, he saw that Roop Kishore and Ram Dass were present with Lotan in the room of his use. He concealed himself by side of the window of that room opening on the way through which he was passing and he heard Lotan saying "GABBOO KI KHABAR AAI HAI MAIN JALDI KAM KARUNGA AAP APNA ENTEJAM KAR LIJIYE." Hearing such conversation, he went to his house. To us, this

statement of Jogram (PW5) is incapable of proving anything against Ram Dass and Roop Kishore. He himself does not say that Roop Kishore and Ram Dass had participated by saying something in such conversation. This itself is against inherent probability of the situation that without any apparent reason this witness would have developed the curiosity of concealing himself outside the window of the room of Lotan to eavesdrop at the conversation going on inside the room. It again sounds preposterous that those inside the room would have been talking their secret at such a loud pitch of voice as to be heard outside by a passerby. So, the testimony delivered by Jogram (PW5) is worthless as against Ram Dass and Roop Kishore.

12. Another piece of evidence relied upon by the prosecution to prove the conspiratorial role of the present accused in the commission of this crime is through the testimony of Liladhar (PW12) that earlier in the present incident Roop Kishore has taken him from Bisauli market inside. Phatak where two other persons were also present and one of them was Ram Dass accused. He did not know the other one Roop Kishore asked Ram Dass to bring the tea for him which was partaken by all present. Thereafter Roop Kishore spoke to him about party factions and asked him to kill (Brij Ballabh PW15). He declined to oblige him, saying that he had left indulging in such activities. He himself admitted that he did not know Ram Dass from before and had been face to face with him only that day when Roop Kishore had called him by name desiring to bring tea. Now, it is to be noted that this witness is of criminal background. He admitted that he had committed dacoity in which case he had been convicted. He stated that he had not made confession of dacoity. Rather he had pleaded false implication. He is a historysheeter. He stated that the house of Brij Ballabh (PW15) was only 3 or 4 furlongs from that Phatak in which he had been taken by Roop Kishore. He did not go to inform Brij Ballabh (PW15) about this episode. According to him, for the first time he disclosed it to one Ram Murti of his village 2 or 3 days after the murder of Brij Ballabh's son Mukesh. This Ram Murti was his coaccused in the dacoity case and had been convicted with him. He is also a historysheeter. It is found to be unsafe to place reliance on the testimony of a witness of such a shady character and antecedents. It is simply a feeble attempt on the part of the prosecution to make a patch work as to the conspiratorial role of the present accused regarding the commission of this crime.

13. The last piece of evidence banked upon by the prosecution against Ram Dass and Roop Kishore is contained in the testimony of Har Prasad (PW1) which is of conjectural nature. What he has stated in paragraph 23 is "MAUJUDA GHATNA KE SAMBANDH MEN MAINE YEH ANDAJ LAGAYA THA KI RAM DASS LOTAN AUR ROOP KISHORE KI GHATNA KE PAHLE KISI JAIL MEN CHALE GAYE AUR MUKESH KA KATL KARNE KE LI YE B AHAR NIKAL KAR AAYE AUR KATL KE BAD VAPAS CHALE GAYE. PHIR KAHA KI MAINE UKT TEENO VYAKTIYON KE SAMBANDH MEN AISA ANDAJ NAHIN LAGAYA THA. MAINE TO GABBOO KE SAMBANDH MEN YEH ANDAJ LAGAYA THA KI USNE KATL KIYA HOGA AUR RAM DASS ROOP KISHORE AUR LOTAN APNI HAJARI KA ENTEJAM KAR LIYA HOGA." It is impossible to infer

any conspiratorial role of Ram Dass and Roop Kishore on the basis of such surmises imagined by this witness. Moreover, he is not an independent witness too. His father and one Niranjana had been murdered on 20/2/69. Lotan, Ram Dass, Roop Kishore, Mathura Prasad and several others had been named as accused of that crime. Mathura Prasad and Ram Nath (brothers of Ram Das) had been found to be in jail at the time of that incident. The final report was submitted in that case. Then this witness had filed a complaint but the same also did not bear any fruits. Subsequently, Mathura Prasad was murdered in which he and others were named as accused. He was bailed out in that case in 1972. He then suspected that some serious incident was likely to happen and even he or other members of his family could be murdered. What is apparent is that he simply belonged to the group opponent to that of the accused Ram Dass and Roop Kishore. That apart, his testimony is simply conjectural and based on surmises which may be termed as figment of his imagination.

14. The situation which emerges in the above backdrop and discussion is that there is no credible or convincing evidence to prove that the present two accused were conspirators of this crime. The prosecution has simply attempted to do the patch work which does not stand the test of scrutiny. It is the cardinal principle of criminal jurisprudence that suspicion, howsoever strong, is not a substitute of proof founded on credible and convincing evidence. As to the conspiratorial role of the present accused Ram Dass and Roop Kishore, the conviction and sentence recorded against them by the Court below cannot be sustained. In the resultant effect, there shall be no question of enhancement of their sentence as prayed by the State in its Criminal Appeal No. 1144 of 1979. Rather these two accused Ram Dass and Roop Kishore are entitled to be acquitted with the acceptance of their Criminal Appeal No. 435 of 1976.

15. In view of the foregoing discussion and for the reasons contained in the preceding paragraphs, we dismiss the State Criminal Appeal No. 1144 of 1979 and allow Criminal Appeal No. 435 of 1979 preferred by Ram Dass and Roop Kishore. The appeal has abated as against the appellant Kubairaj because of his death. We set aside the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge against Ram Dass and Roop Kishore and they are hereby acquitted. They are on bail. They need not surrender. Their personal bonds and bail bonds are cancelled and sureties discharged.