

(1956) 09 AHC CK 0031

In the Allahabad High Court

Case No : Criminal A. No. 942 of 1956 and Ref. No. 87 of 1956

Ram Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 27-09-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 374

Evidence Act, 1872 — Section 145, 33

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (1956) 26 AWR 856

Hon'ble Judges : James, J;Dayal, J

Bench : Division Bench

Advocate : P.C. Chaturvedi, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

James, J.—An incident or incidents of violence took place on 19-8-1954 between certain Mallahs of village Datauji, police circle Firozabad in the district of Agra, in the course of which Bhup Singh and Gobardhan lost their lives while Ram Baksh, Ram Dayal, Kanhai, Lachman, Pyare Lal and Babu sustained injuries. After investigation Sub-Inspector Ram Chandra Singh filed a charge-sheet against twentyfive persons for offences Under Sections 302, 325, 323 and 148, IPC. Among these persons were Beni and Ram Singh. Ram Singh was absconding at the time and was prosecuted as such. The accused were tried in sessions trial No. 172 of 1954 by the Sessions Judge of Agra, who by his judgment dated 22-4-1955 acquitted them all. Shortly after that, on 10-5-1955, Ram Singh was arrested in another police circle. He was tried by the Additional Sessions Judge and sentenced to death u/s 302/149, to five year's rigorous imprisonment u/s 325/149, to nine months' rigorous imprisonment u/s 323/149 and to two years' rigorous imprisonment u/s 148, IPC. He has preferred the appeal against his conviction and sentences, while the learned trial Judge has made a reference for confirmation of his death sentence.

2. Now, in village Datauji there is a plot of land which used to be in the possession of the aforesaid Beni. About a year prior to the present occurrence the owners of the plot ejected Beni and leased it out to Daulat Ram and two others. The lessees in their turn made Bhup Singh and Gobardhan their sajhis or partners in it. It appears however that Beni was anxious to regain possession over the plot, and this gave rise to an apprehension of a breach of peace between him and his party on the one side and Bhup Singh and Gobardhan and their adherents on the other. A case u/s 107, Code of Criminal Procedure was instituted, and appears to have been pending at the time the present occurrence took place.

3. The prosecution allege that the attack in which Bhup Singh and Gobardhan were killed and some of their associates injured was an act of revenge on the part of Beni and his adherents for Beni's dispossession of the aforesaid plot. Before we take up the prosecution narrative we should like to mention that some distance north of the abadi of Datauji is a railway line running roughly east to west, and fields of the village are situated on both sides of it. The line is apparently on an embankment, so that a person at ground level on one side of it cannot see the other side until he climbs up to the top of the embankment.

4. The case for the prosecution is this. On 19-8-1954 Gobardhan and his cousin Lachhman were scraping grass in a field of Gobardhan about a furlong north of the railway line, while Gobardhan's son Kanhai was ploughing it. Shortly after midday a party of about twenty-five men, including Beni and the Appellant Ram Singh, advanced towards the three men. Ram Singh was armed with a country-made pistol while the rest carried lathis, spears and pharsas. Immediately realising that an attack on them was contemplated, Gobardhan, Lachhman and Kanhai fled westwards for safety. But the Appellant and his party overtook them near a well and violently attacked them, knocking all the three men on the ground. Gobardhan succumbed to his injuries a short time later. The Appellant's pistol is not stated to have been used in this incident. Now, at the same time Bhup Singh had been ploughing his field in the neighbourhood. Seeing the attack on Gobardhan and his son and cousin he apprehended that he would be the next victim; consequently he fled for safety towards the village abadi. He had crossed the railway line and had proceeded about three furlongs south of it when he was overtaken by the (sic) and given a number of blows. On being thus attacked he turned east-wards and ran for shelter towards a thatch hut belonging to Ram Baksh, who is a cousin of Bhup Singh, but before he could go very far the rioters surrounded him, and the Appellant, stepping forward a few steps, shot him with his pistol from close range. Bhup Singh fell down and died. At the time Ram Baksh his grandson Jodha and cousin Ram Dayal were at or near the hut. After killing Bhup Singh the rioters turned on these men, attacked them with their weapons and caused a number of injuries. The Appellant however did not use his pistol against them. Their act of revenge accomplished the culprits bolted and disappeared in the direction of the village.

5. The prosecution story is thus found to embrace two incidents, both of course forming part of one and the same transaction. It would be convenient to refer to the (sic) north of the railway line as the "first incident" and that south of the line as the "second incident".

6. The prosecution go on to state that a literate man named Gaya Prasad happened to pass that way a short time later. To him Ram Baksh dictated a report of the occurrence, marked Ex. F-1. In this twenty four persons were named as the men responsible for the riot, hurt and murders, and these included the Appellant and Beni, the Appellant being given the first position in the list of culprits. It should be noted that the report described the second incident in some detail, but with regard to the first merely stated that a girl had come crying that her father and uncle had been killed. The explanation offered is that since the first incident had taken place across the railway line Ram Baksh or the persons near him were not in a position to see it and that whatever they heard about it was from Gobardhan's daughter Shanti. We note that in the report the present Appellant is unequivocally mentioned as the man who shot dead Bhup Singh. Ram Baksh took the report with him to Firozabad, 1 1/2 mile distance, and handed it over at 1-30 p.m., whereupon a case Under Sections 302 and 148, IPC was registered against the twentyfour persons named in the report. Investigation by Sub-Inspector Ram Chandra Singh followed.

7. The prosecution are thus found to charge the Appellant Ram Singh with being a member of the group of rioters who committed the offence and with his being the individual who personally murdered Bhup Singh with a pistol. The Appellant totally denies these allegations and says that he had nothing whatsoever to do with the occurrence. He even declares that he had abandoned Datauji village on the death of his father five years previously. He has not adduced any evidence in defence.

8. Before we turn to discuss the evidence which the prosecution have produced for establishing their case we must deal with the medical evidence, as it leads to consequences of the utmost significance. Bhup Singh was shot in the lungs with small shot; his death was undoubtedly due to this cause. In addition he had four lathi wounds. Gobardhan had nine lathi injuries, including several fractures, and according to the doctor his death was due to shock and haemorrhage resulting from these injuries. The medical evidence is clear that the time of death of both these men would be about 12-30 in the day time on the 19th August.

9. But great confusion is discovered when we examine the medical evidence with regard to the other injured persons. Ram Baksh had two contusions and one lacerated wound, all due to lathis. Ram Dayal sustained eleven lathi injuries, among which were two grievous ones. Kanhai's injuries were sixteen in number, all caused apparently by lathis and all simple. Lachhman's . injuries were nine, all by lathis and simple. Pyare Lal and Babu had suffered some minor injuries, all of which appear due to gun pellets. The remarkable feature of the injuries of all these persons is the time they were sustained. According to the doctor, Ram

Baksh's injuries were received on the 19th August at about 7-30 a.m., Ram Dayal's at about 9-20 a.m., Kanhai's at about 8 a.m. and Lachbman's at about 8-30 a.m., i.e., between 7-30 a.m. and 9-20 a.m. The injuries of Pyare and Babu correspond to the evening of the 18th August. Keeping in view the prosecution case that all these injuries were inflicted at about 12-30 p. m. all this is startling. Perhaps even more startling is that Ram Dayal appeared before the doctor for his medical examination at 12-20 p.m., i.e., ten minutes before the riot. We should like to emphasise that no one on behalf of the prosecution made any attempt to question the doctor with regard to the correctness of these timings, nor is it suggested that he was in error in respect of them.

10. On the occurrence itself the prosecution rely on the testimony of six avowed eye-witnesses, namely, Ram Baksh, Lachhman, Kanhai, Ram Dayal, Jodha and Shanti, the first four being among the injured men. We have in addition one Sm. Tribeni, a niece of Ram Bakhsh, who was examined by the trial Judge u/s 540, Code of Criminal Procedure.

11. Before to make an examination of the testimony of these witnesses we must refer to a difficulty occasioned by a grievous error of law committed by the trial Judge. Barring Tribeni all the witnesses just mentioned had given evidence in the previous trial, sessions trial No. 172 of 1954. There they had been examined and cross-examined at considerable length, and naturally their statements contained many matters both favourable and unfavourable to the defence. What the trial Judge in the present case did apparently with the consent of the defence counsel, was to read out his previous statement to each witness, and on his admitting that he had made it to exhibit it. The previous statement was thereupon treated as substantive evidence in the present trial. No assertion intended to contradict the witness was either put to him nor any opportunity given to him to explain it. This procedure was adopted evidently for the purpose of saving the Judge's time and effort, for we find that barring Ram Baksh the witnesses were examined and cross-examined with considerable brevity, the statement recorded of Ram Dayal being particularly perfunctory. Besides, in putting his previous statement to a witness no one even cared to ask him if that statement was true. We must express our disapproval of the procedure adopted by the learned Judge. Section 33 of the Evidence Act is the only provision of law which deals with the evidence given by a witness in a previous judicial proceeding and lays down the strict conditions under which the previous deposition becomes admissible. None of those conditions applied to the present witnesses, A previous statement can also be used for the purpose of corroboration and contradiction, But here there was no question of corroboration, for in the present trial a witness was not asked to make any specific ascertain which was sought to be corroborated from his statement in the previous trial. Nor could the previous statement be used for purpose of contradiction, because Section 145 of the Evidence Act was contravened inasmuch as the witness's attention was not called to the relevant assertion in his previous statement nor was he given any opportunity of explaining it. To the objection that the defence

counsel was a consenting party to the trial Judge's error it would be sufficient to say that in criminal cases the general principle is that an accused person can consent to nothing and that any consent given by him cannot cure the irregularity of exhibiting the deposition of a witness in the previous trial without properly examining him in the subsequent one. In the circumstances pointed out by us the previous statements of the prosecution witnesses become mere scraps of paper and cannot be used by us for any purpose whatsoever. This has considerably handicapped us in the task of assessing the value of their testimony, for we have no doubt that if the correct law had been applied and a correct procedure followed matters would have been elicited from the witnesses which would have been material of assistance to us in judging the merits of the evidence each of them gives. This notwithstanding we shall endeavour to make the best use of whatever admissible material exists on the record.

12. To turn to the prosecution eye-witnesses. Ram Baksh, who is a cousin of Bhup Singh deceased, was the man who lodged the first report Ex. P-1. His deposition is confined to the second incident. He admits fighting a case u/s 107, Code of Criminal Procedure against Beni. Neither he nor Gaya Prasad (the scribe of the report Ex. P-1) has been able to give a convincing explanation of the circumstances in which that report was taken down. Nor have we been able to appreciate Ram Baksh's necessity for waiting for the fortuitous appearance of some literate person whereas the simplest course for him would have been to hurry to the police station, only 1 1/2 mile distant, and lodge a report verbally. Ram Baksh, it will be re-called, had suffered only two contusions and one lacerated wound, all due to lathis. We find it difficult to understand these insignificant injuries considering his allegation of being attacked by about twenty-five men and that too with spears and pharsas in addition to lathis.

13. Lachhman and Kanhai, respectively the cousin and son of the deceased Gobardhan, depose only about the first incident. Both men received a large number of lathi injuries, hence the fact of their presence cannot be disputed. Nevertheless, their count of the happening does not carry conviction. Lachhman claims to have received both spear and pharsa injuries, while Kanhai says that he was struck with lathis and spears; yet admittedly neither man showed the slightest trace of a any spear or pharsa injury. Both of course are deeply interested in the murdered man and are the avowed enemies of his opponents.

14. Ram Dayal and Jhoda are witnesses of the second incident only, having been in the neighbourhood of Ram Baksh's shed when attacked. Both swear that the Appellant was among the r oters and that he was the person who fired. the fatal shot at Bhup Singh. Both are patently interested in the latter, for Ram Dayal is Bhup Singh's cousin while Jodha's grand-father Ram Baksh is also a cousin of Bhup Singh. Ram Dayal professes to have been attacked with pharsas and lathis, but did not display the effects of a single pharsa stroke. He is the only witness who speaks of the Appellant firing two or three shots with his pistol, the other confining themselves to only one fire by him. But the real factor proving Ram

Dayal a liar is his appearance for medical examination at Firizabad at 12-20 p.m., whereas according to the prosecution the riot and murders took place at 12-30 p.m., ten minutes later. He insists that he was taken to hospital at 4 p.m., a brazen lie. It will be recalled that his injuries, according to medical testimony, correspond to about 9-20 a.m., which means that his injuries were sustained in some other incident. Jodha is difficult to credit for the simple reason that although he professes to have been hit four or five blows with lathis and to have sustained injuries he was not examined medically, from which omission we are entitled to infer that he was free from injuries. He has attempted the explanation that he was not examined medically because his injuries were minor. Minor or major, medical examination could not have failed to detect them. Another curious assertion made by Jodha is that he reached the police station at 12-30 p.m., i.e., the identical time at which he was supposedly beaten. We have grave doubt about the fact of his very presence on the scene.

15. The last prosecution witness, Shanti, is the 17 year old daughter of the deceased Gobardhan. She deposes that she was going with her father's mid-day meal when from across the railway line she saw a crowd Phasing her father, brother and uncle, the pursuers holding a gun and spears and lathis. Seeing this she returned home shouting and weeping. South of the railway line she saw Bhup Singh coming behind her with a plough on his shoulder. Soon after she saw him surrounded, assaulted and shot. In her examination-in-chief she asserted that the Appellant was the man who shot him, but in cross-examination admitted that she did not see the actual shooting by him. She also said that she came straight home weeping and shouting and did not stop at any place on the way, that the Sub-Inspector never examined her and that she never mentioned the occurrence to anyone. In view of these infirmities from which her testimony suffers we are unable to place reliance on it.

16. The Court witness Sm. Tribeni, who is a niece of Ram Baksh, was cited as a prosecution witness but was not examined by them on the ground that she had been won over. The learned trial Judge decided to record her statement u/s 540, Code of Criminal Procedure, She declared before him that as she had given birth of a child a year previously she was feeling weak and could not remember anything. Questioned by the defence counsel she stated that the Appellant had left the village four or five years previously and that she had not seen him in the village since. This woman's presence on the scene cannot be denied by the prosecution, since she is definitely mentioned not only in the Sub-Inspector's site-plan Ex. P-19 but in the first report Ex. P-1 as having seen the entire occurrence. Her testimony, as is clear, does not give the slightest assistance to the prosecution. On the other hand, the fact that she does not repeat the prosecution story goes to throw a great deal of doubt on the truth of that story. Besides, as a niece of Ram Baksh himself, it is inconceivable for her to have been won over by the Appellant. Further, she suggests that the Appellant had been away from the village for several years, so that the chances of his taking part in this crime become slight.

17. The evidence discussed by us above exposes material weaknesses in the prosecution case. The witnesses are closely connected with the two murdered men and with each other, and belong to a party hostile to the Appellant and his supposed associates. Not a single outsider has been produced in evidence, though admittedly such persons were working in neighbouring fields at the time. It is also worthy of note that the only two persons named as eye-witnesses in the first report Ex. P-1, Gulab Singh and Chhotey Lal, have been withheld by the prosecution, although both had been distinctly cited in the police charge-sheet.

18. Then, there is the mysterious part played in the affair by Pyare Lal and Babu, two persons whose injuries we have already referred to. The injuries of both were proved by the prosecution. Yet the most remarkable feature about them is that they do not appear at all in the picture of the crime drawn by the prosecution. None of the witnesses actually examined says that either of them was present on the scene of that he sustained injuries. They have themselves been withheld from the witness-box, although we know that they were named in the charge-sheet. Their injuries have not been accounted for. Still less is it explained as to how they were injured on the evening of the 18th August.

19. Again, there is no evidence of a material nature which might enable us to fix the place of the occurrence without the possibility of mistake. Such material evidence is usually afforded by the blood-stains, but here Sub-Inspector Ram Chandra Singh definitely admits that he did not find bloodstains at either of the places where he found the bodies of Gobardhan and Bhup Singh. On the other hand, as disclosed from the site-plan Ex. P-19, Bhup Singh's body was found by him lying on a cot some distance away from the spot where he is now alleged to have been shot. The absence of bloodstains gives no guarantee of the accuracy of the relevant places mentioned on behalf of the prosecution. Besides, there is no explanation as to how and why Bhup Singh's body was removed from one place to another--the possibility of his being shot somewhere else and his corpse brought to the place where it was eventually found by the Sub-Inspector cannot be eliminated.

20. But it is the medical evidence which shatters all confidence in the truth of the prosecution case. If the case be true, the injuries of all the injured men were caused at about 12-30 p.m. But we have shown that the injuries of Ram Baksh, Ram Dayal, Kanhai and Lachhman, all witnesses for the prosecution, were sustained between 7-30 a.m. and 9-20 a.m. while the injuries of Pyare Lal and Babu were of the previous evening. The prosecution can offer not a word for explanation for this discrepancy, nor can the discrepancy be accounted for by the margin of error, medical science normally allows in such matters. What is even more significant, Ram Dayal reached the medical officer for examination ten minutes before he could possibly have been injured. The learned trial Judge was aware of the difficulties created by the timings of the injuries, but he glossed them over by indulging in a good deal of speculation with regard to what the doctor did or should have done. Yet the learned Judge did not give the doctor any

chance of offering any explanation. We must say that this was unjudicial and unfair. If the learned Judge was not satisfied with the doctor's evidence in the Committing Magistrate's Court it was his duty to summon him at the sessions trial for the elucidation of all doubtful matters--criticising him without hearing his view-point cannot be approved. Besides, since the doctor's testimony was so obviously conflicting with the prosecution case it was the clear duty of the Public Prosecutor to put appropriate questions to him in the Committing Magistrate's Court; instead, as the record shows, the Public Prosecutor was fully satisfied with the doctor's testimony. For our part it is sufficient to observe that since the doctor's testimony stands unchallenged, it must be taken as correct. It is clear from it that the prosecution have been guilty of much concoction of the evidence, concoction which prevents us from accepting the account of either of the two alleged incidents. To this we would add that Jodha had no injuries at all, that the injuries of Pyare and Babu can be nowhere fitted into the prosecution story and that no one sustained a single spear or pharsa injury although the prosecution claims to the contrary.

21. In our opinion there were three separate and distinct incidents, the first on the evening of the 18th August in which Pyare Lal and Babu were injured, the second in the morning of the 19th involving Ram Baksh, Ram Dayal, Kanhai and Lachhman, and the third at about 12-30 on the 19th in which Gobardhan and Bhup Singh lost their lives. Apart from the medical evidence already mentioned our view receives support from a most unexpected quarter, viz., the formal letters which the Sub-Inspector sent to the medical officer for the examination of injuries: the letter in respect of Ram Baksh mentions his case as one Under Sections 302 and 148, IPC but the three letters relating to Ram Dayal, Kanhai and Lachhman all bear Section 307, IPC as the offence. This important point was totally missed in this Court below. It shows that the Sub-Inspector himself had two separate and distinct cases in mind, one of murder and riot and the other of attempted murder only. Moreover, these facts go to throw considerable doubt on the allegation of the recording of the first report Ex. P-1 at 1-30 p.m., for had that time been the correct time of it the injury-letters of all the four injured would have shown the offence as Sections 302 and 148, IPC.

22. In these circumstances we are unable to place any trust in the words of the witnesses on whom the prosecution rely. It is clear that for reasons best known to them the witnesses have jumbled up several distinct incidents and pretended that all of them took place shortly after mid-day. Accordingly a feeble attempt has been made at setting forth a logical and coherent story. But since the evidence has been of a fabricated character the logic and coherence of the story has gone by the board. There is no doubt that in the incidents two men were killed and several others injured. But the prosecution have none but themselves to thank for putting in Court a false account of the offences, so that it is impossible for us to hold that the Appellant participated in them or fired the fatal shot. It is a matter of deep regret that the Sessions Judge by following an erroneous procedure and by taking a one-sided view of the evidence failed to

reach a correct conclusion. 23. For these reasons this appeal must be allowed, the Appellant's conviction and sentence set aside and his acquittal ordered. He shall be released from custody forthwith unless he is required for some other offence. The trial Judge's reference u/s 374, Code of Criminal Procedure is hereby rejected.