

(2006) 04 AHC CK 0223
In the Allahabad High Court
Case No : Criminal Appeal No. 3014 of 1981

Sri Ram and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 04 AHC CK 0223

Hon'ble Judges : V.D. Chaturvedi, J;M.C. Jain, J

Bench : Division Bench

Advocate : G.S. Chaturvedi, V.S. Singh, M.D. Mishra, S.B. Kochar, V. Malviya and N.P. Midha, for the Appellant; A. Rathor and R.K. Singh and A.G.A., for the Respondent

Final Decision : Partly Allowed

Judgement

M.C. Jain, J.—Five accused appellants, namely, Sri Ram, Karan Singh, Hari Pal, Sheopal and Gokul have preferred this appeal against the judgment dated 2.12.1981 passed by IV Additional Sessions Judge, Banda in Sessions Trial No. 139 of 1981. Sri Ram and Karan Singh are brothers whereas Hari Pal is their uncle. The trial court has convicted all of them u/s 302/34 I.P.C. with sentence of life imprisonment.

2. We have heard Sri G.S. Chaturvedi, Senior Advocate, assisted by Sri V.S. Singh and Sri S.B. Kochar for the appellants. Sri R.K. Singh, learned A.G.A. has been heard from the side of the State. The record has been summoned which has been carefully perused by us.

3. The deceased of the incident was one Phool Singh alias Ram Roop Singh murdered on 15.1.1981 at about 1 P.M. at Pailani-Paprenda Road in front of village Piparhari near culvert and the F.I.R. was lodged the same day at 3.30 P.M. by Ram Swamp Singh PW 2-brother of the deceased (eyewitness).

4. The case as per the F.I.R. and the evidence adduced in the court was like this:

A month before the day of incident, a male child had born to Ram Swarup's sister and in that connection on the day of the incident, the deceased was taking traditional gifts for his sister in village Dauri Peera. The informant Ram Swarup Singh PW 2 and his cousin Gulab Singh PW 4 had accompanied the deceased to the bus stand at the culvert of Banda- Pailani. They were waiting for the bus along with other passengers. One roadways bus came heading for Banda which stopped for a while a little ahead of culvert. Some of the waiting passengers boarded it. But by the time the deceased hied towards the bus with his belongings, it (bus) left for Banda. Then the deceased and above witnesses started waiting for another bus. At about 1 P.M. all the accused persons came there. Sri Ram and Haripal had SBBL guns; Karan Singh was armed with countrymade pistol; Sheolal had a spear and Gokul was armed with lathi, Sheolal and Gokul exhorted to kill him (deceased), availing opportunity. Instantaneously, Sri Ram and Haripal opened shots on the deceased with their guns. Receiving injuries, Phool Singh alias Ram Roop Singh fell down by the side of acacia (Babul) tree. Then the accused Karan Singh opened fire on him from his countrymade pistol. Out of fear, the witnesses Ram Swarup Singh and Gulab ran towards the village raising shouts. Ram Sanjiwan PW 3 and many other villagers reached the spot and they challenged the accused who then fled away towards the western side. Because of the gunshot injuries received by Ram Roop Singh, he died at the spot.

5. The previous background was that three years ago somebody had shot in the eye of Sri Ram accused. Sri Ram had named the deceased Phool Singh alias Ram Roop Singh and others in that regard. The deceased was convicted by the court and at the time of present incident, he was on bail during the pendency of appeal. Sri Ram had sued the deceased in civil court also for compensation. The litigation was also pending between Sri Ram accused on the one hand and the informant and the deceased on the other in consolidation.

6. On the lodging of the F.I.R., a case was registered. The chik F.I.R. was written by Chhatra Pal Singh PW 6. The investigation followed as usual at the hands of the Investigating Officer Harsh Nath Singh PW 9.

7. The dead body, after being sealed, was sent for post mortem through Constable Angad Singh PW 8. The autopsy was conducted by Dr D.S. Rana PW 1 on 16.1.1981 at 3 P.M. The deceased was aged about 25 years and about one day had passed since he died. Suffice it so say that three gunshot wounds of entry on neck, left side of abdomen and right side back of abdomen were found on the person of the deceased. There was one gunshot wound of exit also. The death had occurred due to shock and haemorrhage resulting from ante mortem injuries.

8. The defence was of denial and false implication.

9. At the trial court, the prosecution, in all, examined nine witnesses. Ram Swamp-informant PW 2, Ram Sanjiwan PW 3 and Gulab Singh PW 4 were

examined as eyewitnesses. Rest of the evidence was more or less of formal nature inclusive of medical and investigation aspects.

10. Finding the case to be proved, the trial judge convicted the accused appellants as stated above.

11. We should mention before proceeding further that the accused appellant Sri Ram died during the pendency of appeal and the same on his behalf abated on 8.12.2003. Presently the court is concerned with the remaining four accused appellants, namely, Karan Singh, Hari Pal, Sheopal and Gokul.

12. We take up the case of Sheopal and Gokul first, who were allegedly armed with spear and lathi respectively as per the prosecution case. It has been urged for them, and rightly, that the deceased did not sustain any injury of weapons allegedly held by these two persons. In the ocular testimony also given by Ram Swarup Singh PW 2, Ram Sanjiwan PW 3 and Gulab Singh PW 4 only the role of exhortation was assigned to these two accused appellants. It was a bit unnatural that these two would have been there armed with spear and lathi simply for the purpose of exhortation, particularly when the other three accused appellants were armed with firearms. Their participation in the incident was doubtful and benefit of doubt should have been afforded to them. We shall do that by setting aside their conviction and sentence.

13. Sri Ram accused appellant having died during the pendency of the appeal, the Court is now to consider the appeal of the remaining two accused appellants, namely, Karan Singh and Hari Pal who were allegedly armed with countrymade pistol and SBBL gun respectively and used the same in shooting the victim-Phool Singh alias Ram Roop Singh. The deceased received three gunshot wounds of entry attributed to have been shot, one by each of them and third by the accused appellant Sri Ram (now dead) who also held and used SBBL gun. One of the gunshot wounds was on the neck, the other on the left side of abdomen and third on right side back of abdomen.

14. Three eyewitnesses, namely, Ram Swarup Singh PW 2, Ram Sajiwan PW 3 and Gulab Singh PW 4 empathetically and categorically testified about these accused having participated in the murder of Phool Singh alias Ram Roop Singh by shooting. They were subjected to searching cross examination, but nothing tangible came down to dislodge their testimonial assertions. Sri Ram was real brother of Karan Singh whereas Hari Pal is the uncle of Karan Singh. There was bitter enmity between the deceased Phool Singh alias Ram Roop Singh and Sri Ram deceased accused appellant. It came down in the cross-examination of Ram Swarup Singh PW 2 (brother of the deceased) that 3 or 4 years before the incident Sri Ram had been shot in his eye and Phool Singh alias Ram Roop Singh (victim of the present incident) was an accused in that case. He had been convicted by the Sessions Judge. The appeal was pending in this Court (High Court) and Phool Singh alias Ram Roop Singh was on bail. Sri Ram had also sued Phool Singh alias Ram Roop Singh for compensation in civil side. Not only this,

litigation was pending between the two sides in consolidation court also.

15. The learned Counsel for the accused appellants argued that it was improbable that Phool Singh alias Ram Roop Singh, Ram Swarup Singh PW 2 and Gulab Singh PW 4 would have waited at the bus stand till 1 P.M. (at which time the incident is said to have occurred). We do not think that there was anything unnatural in it. Ram Swarup Singh PW 2 well explained that they had started from the village for bus stand at about 11 A.M. Bus stand was at Palara and distance of Palara from his village was 1 1/2 - 2 kos. The buses used to come after interval of about 1/2-1 hour. One bus was missed and Phool Singh alias Ram Room Singh could not board it as there was rush of the passengers to get on it. He could not board the bus in short available time as he had to carry the articles also (gifts that he had to take to his sister who had been blessed with a male child). There was nothing unusual that while waiting for the second bus to arrive, they were there till about 1 P.M. There was plausible explanation for the presence of Ram Swarup Singh PW 2 and Gulab Singh PW 4 at the time of incident that they had come with the deceased to the bus station to help him in boarding the bus for going to sister's place with conventional gifts on the birth of male child to her. There was acceptable reason for the presence of Ram Sanjiwan PW 3 also who had witnessed the incident while going from his house to his fields in the western side. His name found place in the promptly lodged F.I.R. The appellants could not assign any reason against this witness that would have tempted him to depose against them falsely. He was neither shown to be thick with the prosecution side nor inimical to them (accused). Mere relationship of Ram Swarup Singh PW 2 and Gulab Singh PW 4 with the deceased could also not be a ground to discard their testimony. A kin of the deceased is to be treated as a normal witness. The only requirement is that his testimony should be carefully scrutinized. On doing so, as we said, nothing comes out to doubt their presence at the spot and the fact that they witnessed the incident of the shooting of the deceased by Sri Ram deceased accused, Karan Singh and Hari Pal. The testimony of these three eyewitnesses is well in inconformity with the medical evidence too.

16. It has next been argued by the learned Counsel for the accused appellants that Ram Swarup Singh PW 2 claims himself to be the informant, but in the inquest report, recital is that the F.I.R. was lodged by the village Chaukidar Fakira. The argument is to be rejected. It is there in the testimony of Ram Swarup Singh PW 2 that he, after scribing the F.I.R. at the spot on a paper got fetched from the village, had handed it over to Chaukidar Fakira who had taken it to the police station. The Chaukidar Fakira was also examined as PW 7 who stated that on gaining information of murder of Phool Singh alias Ram Roop Singh, he had reached the spot from his field in noon time where Ram Swamp Singh, Gulab Singh, Ram Sajiwan etc. were there. Ram Swamp Singh had given a written report to him to take the same to the police station and he had carried the same to the police station where he had lodged it at about 3-3.30 P.M. In this view of the matter, this argument is lost.

17. Another argument from the side of the accused appellants is that Ram Swarup Singh PW 2 stated in para-25 of his testimony before the court that firing had been done from a distance of 12-13 paces. One step being equal to 1 1/2 feet, the firing, according to him, was made from a distance of 18-20 paces. The fact, however, was that two of the gunshot injuries sustained by the deceased had blackening whereas no such sign was there in the third injury. The counsel reasoned that he was not present at the spot and he deposed only on the basis of his imagination. According to him, his testimony was contrary to medical evidence. Suffice it to say in this regard that distance of firing spoken by a witness cannot be interpreted with exactitude as if with measuring tape. The Supreme Court has also held in the case of State of Uttar Pradesh Vs. Sughar Singh and Others, that inconsistency relating to distance from which the gunshots were fired between the medical and eyewitness account is of no significance when the prosecution evidence pertaining to assault by firearms substantially tallies with the medical evidence. Indeed, three shots would not have been fired by the shooters, standing in a row in a disciplined way. Two of the shots were fired from within blackening range while the third was not from within such range. It was for this reason that blackening was found in two gunshot wounds of entry whereas no such sign was there in the third gunshot wound of entry. Really speaking, there was no conflict between the medical evidence and ocular testimony.

18. Learned Counsel for the accused appellants then referred to another F.I.R. lodged by the accused appellant Karan Singh against 19 persons including Ram Sanjiwan PW 3 and Gulab Singh PW 4 regarding an incident of the same day of about 1.30 P.M. in which two persons, namely, Kshatrapal and Dharam Pal were murdered. This F.I.R. is hardly relevant to beam any light on the present incident. We note that this F.I.R. did make mention of the murder of Phool Singh alias Ram Roop Singh (victim of the present incident) having taken place that very day. In a sense, it supports the prosecution case of the present incident that Phool Singh alias Ram Roop Singh's murder took place at about 1 P.M. i.e. before the double murder of Kshatrapal and Dharam Pal.

19. We should say with passing reference that reaching the spot, the Investigating Officer had found physical evidence also in the form of blood as also conventional gifts strewn nearby on the Patari of the road near the dead body of the deceased. It would be recalled that the deceased was taking conventional gifts to his sister who had been blessed with a male child.

20. On the basis of the above discussion, we find that it was clinchingly established by trustworthy evidence that Karan Singh and Hari Pal (with the deceased accused appellant Sri Ram) participated in this crime in shooting the victim Phool Singh alias Ram Roop Singh on the given date, time and place. They were acting in concert with common intention. The benefit of doubt being afforded to the accused appellants Sheopal, Gokul and Sri Ram having died, the offence committed by the accused appellants Karan Singh and Hari Pal falls

within the ambit of Section 302 read with Section 34 I.P.C.

21. We finally order as under:

22. We partly allow this appeal and set aside the conviction and sentence of Sheopal and Gokul. The appeal has abated on behalf of accused appellant Sri Ram, he having died during the pendency of appeal.

23. The appeal on behalf of the accused appellants Karan Singh and Hari Pal is dismissed. Their conviction u/s 302 read with Section 34 I.P.C. is affirmed and each of them shall undergo the sentence of life imprisonment as awarded. These two accused appellants Karan Singh and Hari Pal are on bail. The Chief Judicial Magistrate, Banda shall cause them (Karan Singh and Hari Pal) to be arrested and they shall be sent to jail to serve out the sentence passed against them.

24. Compliance report shall be submitted by the court below within two months from the date of receipt of a copy of this order.