
(2003) 09 AHC CK 0304
In the Allahabad High Court
Case No : Government Appeal No. 185 of 1981

State of U.P.	Vs	APPELLANT
Doodh Nath Rai.		RESPONDENT

Date of Decision : 18-09-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2004) 1 ACR 774

Hon'ble Judges : Onkareshwar Bhatt, J;M.C. Jain, J

Bench : Division Bench

Advocate : S.K. Pal, A.G.A, for the Appellant; C.S. Saran, Amar Saran and Madhur Prakash, for the Respondent

Final Decision : Dismissed

Judgement

Onkareshwar Bhatt, J.—State of U. P. has preferred this appeal against the judgment and order dated 23.10.1980, passed by the then VIIth Additional Sessions Judge, Gorakhpur. Respondent-accused Doodh Nath Rai along with 12 others were tried for the offences under Sections 147, 148, 302/149 and 307/149, I.P.C. and were acquitted by the impugned judgment.

2. Sri S. K. Pal, learned A.G.A. and Sri Amar Saran, learned Counsel for the Respondents have been heard.

3. The deceased of this case is Deo Narain Rai. The deceased along with his brother Awadh Narain Rai, P.W. 1 the informant and Sugriv Rai were returning on bicycles to their village Chandi after finishing their work at Tehsil Bansaon on 7.2.1979. At about 5 p.m. when all the three were on the chak road in between village Sajiwan and village Chandi the deceased stopped for urinating. Awadh Narain Rai and Sugriv Rai went ahead of the deceased for about 20 paces and in the meantime from the wheat field which was towards west of the chak road eight accused-Respondents, namely, Doodh Nath Rai armed with bomb, Bankey Rai armed with gun, Nitya Nand Rai armed with country made pistol, Raghav Rai

armed with bomb, Chandra Dev Rai also armed with bomb, Sri Ram Rai armed with double barrel gun, Dharam Deo Rai armed with country made pistol and the accused Bhagwati Rai making exhortation came out. From the eastern side accused Kashi Rai armed with gun, Jai Prakash Rai armed with bomb, Gulab Rai armed with lathi, Deo Nath Rai and Narsingh Rai making exhortation came out. All the 13 accused fired with gun and threw bombs at them. The informant and Sugriv sped their cycles towards the village and raised alarm. However, all the accused after surrounding Deo Narain Rai assaulted him by gun, country made pistols and bombs. On alarm raised by the informant Dharamraj Rai P.W. 2, Mukti Nath Rai P.W. 3 and Ram Hazoor P.W. 4, came and saw the occurrence. The report of the occurrence was lodged by the informant at police station Bansgaon on 7.2.1979 at 8.40 p.m. When the F.I.R. was lodged P.W. 8 Indrajeet Singh the Investigating Officer was present at the police station.

4. On 9.2.1979 at 1.30 p.m. Dr. P. N. Awasthi, P.W. 7, conducted the autopsy on the dead body of the deceased. Following ante-mortem injuries were found by the doctor:

- (1) Blast injury with lacerated margins 4" x 4" x muscle deep on left knee inner side with blackening of skin and yellow colourisation at various places.
- (2) Multiple abrasions in an area of 6" x 3" in front of lower half right thigh.
- (3) Blackening on back yellow colourisation of skin in an area of 12" x 10" on lower part back.
- (4) Blast injury 6" x 6" x skin deep with blackening and yellow colourisation at various places on right buttock.
- (5) Gun shot wound 3/4" x 3/4" chest cavity deep on back of right side chest outer part 8" below shoulder and 6" away spinal cord.
- (6) Blast injury 3" x 2" x muscle deep on back of right ear with blackening and yellow colourisation of skin all round.
- (7) Blackening in an area of 6" x 6" on front of neck and front of chest in the middle line with yellow colourisation of skin at other places.

5. On internal examination the doctor found that the fourth rib under injury No. 5 was broken 1" x 1". Lacerated wound 1" x 1" was also found below injury No. 5 in the right lung. Two corks and 166 metallic pellets were found in the lung. In the opinion of the doctor the death was caused due to shock and haemorrhage as a result of ante-mortem injuries.

6. The accused-Respondents have stated to have been falsely implicated due to enmity.

7. The Appellants Chandra Deo Rai, Bhagwati Rai and Deo Nath Rai died. By order dated 25.8.2003, the appeal was ordered to abate against them.

8. The deceased of this case, Deo Narain, was returning from Tehsil Bansgaon

along with his brother, Awadh Narain, P.W. 1 and Sugriv when he met his fateful end in between village Sajiwan and village Chandi at the date and time of occurrence. According to the prosecution case, 13 accused-Respondents, out of whom three have died, assaulted him. Four of them had bombs, three had guns and two had country made pistols and one had a lathi. The assault was made on the deceased while he (deceased) had sat for urinating near Parti on chak-road. The evidence shows that all the accused surrounded the deceased and assaulted him by guns, country made pistols and bombs. It has also come in evidence that the deceased sustained injuries on his head and mouth due to firing of guns, country made pistols and blast of bombs. Four or five blasts of bomb took place and five or six times guns and country made pistols were fired. In all the deceased had seven injuries. The injury Nos. 3 and 7 were only blackening and yellow deposits of blast powder. Injury No. 5 alone is gun shot injury which was on the right side chest. Other injuries are on left knee, right thigh, back right hip, back right ear and on the neck. Dr. P. N. Awasthi P.W. 7, has stated that blast injuries of the deceased could have been caused by blast of one bomb. Number and nature of the injuries do not fit in with the manner of assault that the bomb was blasted four or five times or that firing by country made pistols and guns had taken place five or six times. The deceased had not sustained any injury on his head and face, as has been stated by Mukti Nath Rai, P.W. 3. When the assault on the deceased took place and, according to prosecution case, all the thirteen accused had surrounded him, the number of injuries should have been much more. Awadh Narain P.W. 1, has stated that due to blast of bomb, no pit was caused on the ground. He has also stated that he did not see any empty cartridge on the spot and he also did not see any material due to blast of bomb. Dharam Raj Rai P.W. 2, has stated that he did not see Sutali on the spot and P.W. 3 Mukti Nath Rai has stated not to have seen any empty cartridge on the spot. P.W. 8 Indrajeet Singh, Investigating Officer, however, on the following day of the occurrence found empty cartridges, pieces of bomb and half burnt Sutali and had prepared memo in that regard.

9. Sugriv, who is alleged to be accompanying the deceased and P.W. 1 Awadh Narain, on return from Tehsil Bansgaon has not been examined in this case. P.W. 1 Awadh Narain, has stated that nine accused of the case had assaulted his brother, Raghunath Rai on 7.7.1978. The deceased had lodged F.I.R. in that regard that case was pending. P.W. 1 Awadh Narain, was Pradhan of the village. In the capacity of Pradhan a case was instituted by him against accused Bankey Rai regarding some land. There was litigation with accused, Raghav Rai and informant, Awadh Narain from the time of occurrence. Litigation for some land of Gram Sabha was also going on with accused, Bhagwati Rai. These cases were pending four or five years earlier from the date of occurrence. The informant, Awadh Narain has stated that he has instituted a case against accused, Bankey Lal regarding two Bamboo clumps. It has come in evidence that a case under Sections 395, 397 and 307, I.P.C. was going on wherein the informant Awadh Narain and Ram Murat, scribe of the F.I.R. of the case, are accused. P.W. 4 Ram

Hazoor and Bajrangi are also accused with them. The informant has stated that in the above case of dacoity accused Shri Ram, Bhagwati Rai, since dead, and Raghav Rai are prosecution witnesses. It has come in evidence that the accused persons belong to different families and except them there is no male member in their families. The above fact is suggestive that the accused persons were on inimical terms with the informant, Awadh Narain. The cases against some accused persons were initiated by the informant. The deceased had nothing to do with these cases. In the above situation, it was the informant, Awadh Narain, who should have been the target of attack by the accused persons. The informant has stated that accused persons did not assault him. In the F.I.R., it is stated that the accused persons hurled bomb and fired on them, meaning thereby the informant, Sugriv and deceased were their target. The informant has stated that gun was aimed at him also. No injury has been sustained by the informant. The informant has stated that although the accused persons aimed at him, but no fire was made at him and no bomb was hurled at him. He has further stated that they fired at him but it did not hit him. He has further stated that accused Kashi Rai and Dharam Deo Rai chased him for about 1-1/2 minutes and both of them fired at him twice. The statement of informant given in Court does not fit in with the recital in the F.I.R. that accused persons fired and threw bomb at him. The informant was only at a distance of 20-25 paces from the accused persons. Three eye-witnesses, namely, P.W. 2 Dharam Raj Rai, P.W. 3 Mukti Nath Rai and P.W. 4 Ram Hazoor Rai are said to be returning after supervising their cultivatory plot in village Bindopur and Sajeewan. It has come in evidence that on the date of occurrence, it was raining during the day and night also. In the above situation, neither any irrigation or cultivation of the plot nor weeding of grass could have been done. All the three witnesses, therefore, appear to be chance witnesses as has been found by the trial court.

10. The informant was on cycle. He has stated that after the occurrence, he had sent his cycle to his home. It is curious that instead of proceeding to police station on cycle immediately, he sent back the cycle. Awadh Narain went to police station twice. For the first time, he was asked by constable who was on guard duty to bring a written report of the occurrence. The informant went back to Bansgaon where he had left Ram Murat Rai. He has stated that after getting the report scribed by Ram Murat, he gave the same at the police station. Delay in lodging the F.I.R. shows that some coloured version was put forth in the F.I.R.

11. Some papers have been filed in defence which show that in the matter of succession of Vibhuti Rai, daughter's son of the deceased, the informant got an order in his favour. Vibhuti Rai has also filed objection in the court of Consolidation Officer in mutation case. These documents show that relations between the deceased and the informant. Awadh Narain were strained.

12. On over all appraisal of the evidence, it appears that truth has been suppressed and the case presented by the prosecution is not free from doubt. The trial court has rightly found the case of prosecution to be doubtful. The order

of acquittal recorded by the trial court calls for no interference. The appeal has got no force and is accordingly dismissed.

13. The accused-Respondents are on bail. Their bail bonds are cancelled and sureties discharged.