
(2006) 01 AHC CK 0217
In the Allahabad High Court
Case No : Government Appeal No. 760 of 1981

State of U.P.

APPELLANT

Vs

Ganga Ram, Uma Shankar and Jairam

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2006) 01 AHC CK 0217

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

Bench : Division Bench

Advocate : K.P. Shukla and A.G.A, for the Appellant; Kamal Krishna and Surendra Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

M. Chaudhary, J.—This is an appeal tiled on behalf of the State from the judgment and order dated 21st of January 1981 passed by Sessions Judge Fatehpur in Sessions Trial No. 339 of 1980 State v. Ganga Ram and Ors. acquitting the accused respondents of the charge levelled against them

2. Brief facts giving rise to this appeal in nutshell are that Ram Charan Ram Singh and Sighhan were real brothers residing at village Baluwapur. Baluwapur and Gandhrpi are hamlets of village Habsapur Enamity between Lakshmi Narain alias Lallu, the Village Pradhan and Ganga Ram Kurmi resident of village Hafispur Harkaran was going on since long. Ram Singh used to accompany Lakshmi Narain for his security and sleep at his house near him, and on that very account Ganga Ram Kurmi and his associates used to bear grudge against Ram Singh. In the month of February this very year a criminal case u/s 307 IPC was launched against Lakshmi Narain and his associates, and Ganga Ram and his associates were accused of noting etc. Sighhan was a witness against Ganga Ram and his associates in the case of rioting against them. Ganga Ram and his associates threatened Ram Singh several times that he should not work as security guard for Lakshmi Narain otherwise he would be done to death. In the noon of 3rd of

July 1979 Ram Charan was grazing his cattle at the canal distributory and his brother Ram Singh was collecting fruits of Mahua tree in his grove. Devi Prasad and his brother Nanhkai were also grazing their cattle at the canal distributors at some distance towards east. At about 1.00 p.m. that noon hearing the shrieks of Ram Singh, Ram Charan rushed towards his grove and saw that Ganga Ram armed with gun and his brother Uma Shanker along with one Jai Ram with countrymade pistols were chasing Ram Singh and on reaching in the vacant field of Ram Asrey. Ganga Ram fired at Ram Singh with gun hitting him at his chest and all the three miscreants bolted away towards west. Sustaining the fatal injury Ram Singh died on the spot. In the meanwhile Moti Lal, father of the deceased and other co-villagers reached the scene of occurrence. Then Ram Charan went to his village and scribed report of the occurrence and went to police station Bindki situate at a distance of six miles from the place of occurrence and handed over written report of the occurrence to the police there. The police prepared check report on the basis of written report and made entry regarding registration of the crime in the GD (Exts Ka 2 and Ka 3). SI Sita Ram Arora to whom investigation of the crime was entrusted recorded statement of Ram Charan, the first informant at the police station itself. Then he went to the scene of occurrence. He drew inquest proceedings on the dead body of Ram Singh preparing inquest report (Ext Ka 7) and other necessary papers (Exts Ka 8 to Ka 10) and handed over the dead body in a sealed cover alongwith necessary papers to constable Brij Pal Singh and village chaukidar Ram Autar for being taken for its post mortem. Then he inspected the place of occurrence and prepared its site plan map (Ext Ka 11). He also collected blood stained and simple earth from the scene of occurrence and prepared its memo (Ext Ka 12). Since none of the eye witnesses was available at that time, he recorded the statements of witnesses next morning. Then he arrested accused Ganga Ram and Uma Shankar from their house and accused Jai Ram from his field and went back to police station taking them.

3. Autopsy on the dead body of Ram Singh conducted by Dr Jagdish Saran Rai. Medical officer District Hospital Fatehpur on 4th of July 1979 at 2:15 p.m. revealed below noted ante mortem injuries:

1. Gun shot wound $3/4 \times 3/4$ x cavity deep on front of chest 3" away from left nipple at 7 O'clock position with margins lacerated and inverted Blackening and tattooing was found present around the wound.

On internal examination left lung and pleura, heart and pericardium were found lacerated. Stomach contained 4 oz semi digested food. The doctor opined that the death was caused, due to shock and haemorrhage as a result of ante mortem injury about one day ago. The doctor removed six big pellets and wadding pieces from inside the injury.

4. SI Sita Ram Arora investigated the crime in main and on 5th of July 1979 investigation of the case was transferred to Station Officer Ram Pratap Tripathi. After completing the investigation he submitted charge sheet against the accused

accordingly.

5. After framing of charge against the accused the prosecution examined Ram Charan (PW 1) and Devi Prasad (PW 2) as eye witnesses of the occurrence. PW 3 HM Raj Kumar Misra who prepared check report on the basis of the written report handed over by Ram Charan at the police station and made entry regarding registration of the crime in General Diary has proved these papers (Exts Ka 2 & Ka 3), PW 4 Dr Jagdish Saran Rai, Medical Officer District Hospital Fatehpur who conducted autopsy on the dead body of Ram Singh has proved the post mortem report. PW 5 CP Brij Pal Singh to whom dead body alongwith necessary papers was entrusted for being taken for its post mortem has stated the said fact. PW 7 SI Sita Ram Arora who investigated the crime in main and PW 6 station officer Ram Pratap Tripathi who completed the investigation and submitted charge sheet against the accused have proved these papers.

6. The accused denied the alleged occurrence altogether stating that they had been implicated in the case falsely on account of enmity. Accused Uma Shankar also stated that his brother was a witness against Lakshmi Narain and others in a case u/s 307 IPC.

7. The accused examined one Ram Deen (DW 1). Ram Sanjivan (DW 2) and Amrit Lal (DW 3) in their support. DW 1 Ram Deen and DW 2 Ram Sanjivan stated that at about 11:00 a.m. the alleged noon none fired at Ram Singh and that he committed suicide himself under the acacia tree situate in the field of Ram Asrey. DW 3 Amrit Lal stated that he did not witness the incident of firing at Ram Singh; that the alleged noon on hearing the sound of shot tired he rushed to the scene of occurrence but he did not see any person there and saw Ram Singh lying dead in a field at Gandharpi and that some 10-15 days thereafter some of the co-villagers had given an application to the Superintendent of Police. Fatehpur and he put his signatures on that application without going through its contents.

8. On an appreciation of the parties' evidence and other material on the record the trial Judge disbelieved the prosecution case and evidence and placing reliance on the testimony of three witnesses examined by the accused in their defence held that Ram Singh could have committed suicide because of some family troubles and giving benefit of doubt to the accused acquitted them.

9. Feeling dissatisfied by the impugned judgment and order, the State preferred this appeal assailing acquittal of the accused respondents.

10. We have heard Sri K.P.Shukla learned AGA for the State appellant and Sri Kamal Krishna learned counsel for the accused respondents and gone through the record.

11. It is well settled that in criminal cases if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be

adopted. On the basis of this very principle appeal from an order of acquittal should be interfered with only when there are compelling and substantial reasons therefor. After going through the impugned judgment and record of the case we find ourselves unable to agree with the findings recorded by the court below as the same are not at all sustainable.

12. Learned AGA for the State appellant vehemently argued that the trial judge wrongly discarded the sworn testimony of the two eye witnesses placing implicit reliance on the defence evidence which is worthless. On the other hand, the learned counsel for the accused respondents supported acquittal on the lines of the reasoning adopted by the trial judge. On careful analysis, we find sufficient force in the submissions of the State Counsel. Relevant discussion would render the situation clear.

13. The defence case is that due to family disputes Ram Singh committed suicide the alleged forenoon at about 10-11 a.m. The evidence adduced by the accused in their defence consists of the testimony of DW 1 Ram Din, DW 2 Ram Sajiwan and DW 3 Amrit Lal. Out of the testimony of these three witnesses testimony of DW 3 Amrit Lal is of no avail to the defence. DW 3 Amrit Lal who is resident of village Baura ka Dera situate at a distance of some four furlongs from the place of occurrence stated that at about 11:00 a.m. the alleged day he was ploughing his field situate at a distance of about 100 yards from the place of occurrence; that he heard sound of a shot fired, that someone might have shot Ram Singh but he did not see any other person at the scene of occurrence at that time though he saw a girl at some distance and that about 3-4 hours thereafter he went to the scene of occurrence. He further stated that some 10-15 days after the said incident Raghuraj brought an application to him and he obtained his signatures thereon telling him that that application was to be given in the case of Ram Singh and that he put his signatures- on that application without going through the contents thereof Application aforesaid (Ext Kha 1) has not been duly proved as it is not known as to by whom that application was scribed and the signatures of various persons who allegedly signed that application too have not been proved. This witness Amrit Lal is a witness no better than a got up witness. DW 1 Ram Din stated that being a co-villager he used to treat Ram Singh as his grandson (Naati); that for the last 4-6 days prior to the occurrence there were some family disputes in his family; that at about 10:00 a.m. the alleged forenoon he was sitting at the berm of the canal distributor); that Ram Singh] came to him alongwith his sister and touched his feet and as he asked him as to what he was doing he replied that he would go where Almighty would take him and then he proceeded towards his grove and that a little later he heard the sound of a gun shot and thereafter his sister Kallaniya going away weeping from the field of Nai and Ram Singh died near the acacia tree in that field. He admitted that the acacia tree was situate at a distance of about half a furlong from the canal distributory where he was grazing his cattle. He further stated that he continued grazing his cattle upto 2-3 hours thereafter at that very place. This witness Ram Din stated his age to be 70 years. He admitted in his cross-examination that he

was history sheeter. Hans Gross in his book "Criminal Investigation" Edited by JC Adam 5th Edition published in the year 1962 at pages 159- 160 observed that if the eye sight is normal and the light good, one is able in broad day light to recognize persons whom one knows very well at a distance of 50- 90 yards. The eye sight of an old man aged about 70 years can not be said to be normal as due to age factor it must have deteriorated. Hence it is difficult to believe that he would have seen Ram Singh near the acacia tree situate at a distance of more than half furlong firing at himself. Otherwise too, he stated that at about 10:00 a.m. the alleged forenoon Ram Singh came to him and touched his feet and after having a little talk he went away towards his grove and soon thereafter he saw Ram Singh near the acacia tree and heard sound of gunshot and his sister going away weeping therefrom. But his subsequent conduct falsifies it as he stated that after the incident he continued grazing his cattle for 2-3 hours there. He nowhere stated that after hearing sound of gun shot he went to see the victim as to what happened to him. If a person touches feet of some elderly person it is but natural that if the latter perceives that there is something wrong with that fellow he would certainly rush for his help or at least see as to what happened to him. In view of these facts the testimony of this witness does not inspire confidence in its truthfulness. DW 2 Ram Sajiwan stated that at about 11:00 a.m. the alleged noon he was grazing his cattle at the canal distributory; that he saw that Ram Singh committed suicide near the acacia tree standing in the field of Ram Asrey Nai by firing with countrymade pistol and that when other co-villagers reached the scene of occurrence he also went there but he did not see any miscreant at the scene of occurrence. He admitted in his cross-examination that Raghubir is his cousin brother and litigation over some land was going on in revenue court at that time between Ram pal, grandfather of Ram Singh on one hand and Raghubir on the other. According to defence version itself the application that Ram Singh committed suicide was given to the Superintendent of Police, Fatehpur some 10-15 days after the said occurrence. The defence version that Ram Singh committed suicide does not get corroboration from medical evidence as PW 4 Dr Jagdish Saran Rai. Medical officer District Hospital Fatehpur who conducted autopsy on the dead body of Ram Singh on 4.7. 1979 stated in his cross-examination that the ante mortem firearm injury on the chest of the deceased could not be self inflicted. Further there is nothing on the record to show that any countrymade pistol with which he allegedly committed suicide was found lying on his body or near thereto. Thus the defence theory of suicide by Ram Singh which has been wrongly believed by the trial judge has to be left out of consideration. Inevitably the finding of the court below that the possibility of Ram Singh committing suicide could not be ruled out is erroneous and perverse.

14. The trial judge wrongly discarded the testimony of eye witness PW 1 Ram Charan, brother of the deceased and first informant and PW 2 Devi Prasad observing that their statements were contradictory on several points. He pointed out that PW 1 Ram Charan, brother of the deceased stated that he was grazing his cattle at the canal distributory towards the western side since 8-9 a.m. that

morning and Devi Prasad and his brother Nanhkai reached there with their cattle at about 10:00 a.m. whereas PW 2 Devi Prasad stated that he and his brother taking their cattle reached at the canal distributory at about 12:00 noon and after a little while Ram Charan also reached taking his cattle there. The gist of the testimony of PW 1 Ram Charan was that the alleged day he was grazing his cattle at the canal distributory since 8-9 a.m. and Devi prasad and Nanhkai taking their cattle for grazing reached at about 10:00 a.m. at the canal distributory at a short distance; that at that time his brother Ram Singh was collecting "Gullu" (fruits of mahua tree) in his grove; that at about 1:00 p.m. he heard the shouts of Ram Singh to save him; that immediately he rushed towards his grove; that Devi Prasad and Nanhkai also rushed with him and they saw that accused Gangs Ram armed with gun alongwith his brother Uma Shankar and one Jai Ram with countrymade pistols were chasing Ram Singh and as Ram Singh was running in the field of Ram Asrey all the three pounced upon him and Ganga Ram fired at him with his gun from a close range and sustaining the firearm injury Ram Singh fell down and died on the spot and that as they chased the assailants Ganga Ram reloaded his gun and at the gun point they succeeded in making their escape good and that then he went to his village and his family members and other co-villagers reached at the scene of occurrence. PW 2 Devi Prasad corroborated him stating likewise on all material points. This time difference did not justify the rejection of the testimony of the two eye witnesses for the simple reason that time is not the essence of life of rustic villagers who speak about it on the basis of rough estimation, and not with precision.

15. Further, the trial court observed that PW1 Ram Charan stated that his brother Ram Singh worked in a factory at Kanpur for a period of six months two years prior to the occurrence whereas PW 6 station officer Ram Pratap Tripathi stated that he enquired into the matter and learnt that Ram Singh had left the job only one month prior to the occurrence. But no documentary evidence has been brought on the record by this witness. In our considered view. Ram Singh had no reason to tell a lie on the point as he stated that in the month of February that very year some quarrel took place between Lakshmi Narain Pradhan on the one hand and accused Ganga Ram and others on the other and cross-cases were launched against them which were pending at that time. Admittedly Sighhan. younger brother of Ram Charan was in the employment of Lakshmi Narain for the last 8-9 years. PW 1 Ram Charan stated that since the said occurrence in the month of February Ram Singh used to work as body guard of Lakshmi Narain and sleep at the house of Lakshmi Narain Pradhan near him since after 4-5 days of the said incident of assault between Lakshmi Narain Pradhan and Ganga Ram and others.

16. Minor discrepancies on trivial matters not touching core of the case should not entail rejection of the sworn testimony of the eye witnesses if the same is consistent regarding substratum of the occurrence. Even honest and truthful witnesses may differ in some details unrelated to the main incident because of perception and retention power. Reproduction also differs from individual to

individual. Both these witnesses were subjected to searching and gruelling cross-examination but nothing tangible could be brought on the record to shake their credibility as to the central core of their testimony that Ganga Ram shot dead the deceased on the given date, time and place.

17. Learned counsel for the accused respondents contended that the accused had no motive to commit the murder of Ram Singh. It is well established that in the case of direct evidence motive pales into insignificance. However, according to PW 1 Ram Charan for the last five months Ram Singh used to work as body guard of Lakshmi Narain Pradhan and accused Ganga Ram and his family members used to threaten him not to continue as body guard of Lakshmi Narain Pradhan otherwise he would be killed. That constituted sufficient motive for the instant crime.

18. Both the eye witnesses namely PW 1 Ram Charan and PW 2 Devi Prasad appeared to be truthful and straightforward witnesses as they were subjected to rambling and gruelling cross-examination but nothing favourable to the accused could be elicited therefrom. PW 1 Ram Charan is the brother of the deceased. His sworn testimony stands well corroborated by the medical evidence and FIR of the occurrence lodged by him promptly at the police station. It should be stated at the risk of repetition that medical evidence completely dislodges the defence theory of suicide by Ram Singh. PW 4 Dr Jagdish Saran Rai categorically stated in his cross-examination that the ante mortem firearm injury sustained by the deceased could not be self inflicted. The fact of PW 1 Ram Charan being close" relative of the deceased, would add to the value of his testimony because he would naturally be interested in ensuring that real culprit is punished and not screened. As far as testimony of PW 2 Devi Prasad is concerned, he is an independent witness as he had no axe to grind against any of the accused.

19. Thus, on a global consideration of the evidence and concomitant circumstances we are of the view that judgment of the trial court can not be sustained in law as the trial court ignoring the ocular testimony corroborated by medical evidence and taking a suspicious view of the evidence based on conjectures and surmises has recorded the finding of acquitting the accused, However since no overt act has been attributed to accused Uma Shankar and Jai Ram, they can well be given benefit of doubt. Thus, accused Ganga Ram is held guilty of the charge levelled against him u/s 302 IPC.

20. The appeal is allowed in part setting aside acquittal off accused respondent Ganga Rani, He is convicted u/s 302 IPC and sentenced to imprisonment for life thereunder,

21. Acquittal of accused respondents Uma Shankar and Jai Ram is hereby affirmed. They are on bail. Their bail bonds are hereby discharged.

22. Accused respondent Ganga Ram is convicted u/s 302 IPC and sentenced to imprisonment for life thereunder He is on bail.

23. Chief Judicial Magistrate. Fatehpur is directed to get him arrested and sent to jail to serve out the sentence imposed upon him.

24. Copy of the judgment be certified to the court below.

25. Record of the case be transmitted immediately to the court concerned for necessary compliance under intimation to this court within two months from the date of receipt of the record and the copy of the judgment.