
(2005) 12 AHC CK 0196
In the Allahabad High Court
Case No : Government Appeal No. 747 of 1981

State of U.P.

APPELLANT

Vs

Ram Parikshan Tiwari, Ramayan, Ram Belas and Kaushal

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 379, 399, 402
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2005) 12 AHC CK 0196

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

Bench : Division Bench

Advocate : Devendra Upadhyay and A.G.A, for the Appellant; D.N. Wali and Ashok Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The State has preferred this appeal against the judgment dated 9.12.1980 passed by III Additional District & Sessions Judge, Deoria in Sessions Trial No. 44 of 1980. The four accused respondents, namely, (1) Ram Parikshan Tiwari, (2) Ramayan, (3) Ram Bilas and (4) Kaushal have been acquitted of the charge u/s 302 read with Section 34 IPC.

2. The incident took place on 31.8.1978 at about 9 A.M. in village Parsauni Anandghan, P.S. Khampar, District Deoria. The deceased was one Ram Nagina Tiwari and written F.I.R. was lodged the same noon at 2 P.M. by his wife Padmawati PW 4 who claimed herself to be an eyewitness. The case as per the F.I.R. and evidence adduced in the court was like this: Ram Nagina Tiwari was a teacher in Ratasiya Kothi Middle School and used to go there daily from his house. His family consisted of his wife Padamawati and three children. The accused other than Kaushal were also residents of the same village. Sometimes before the present incident, Ram Parikshan was arrested in a dacoity case of P.S. Bankata and was released from jail. When he returned, he suspected that Ram Nagina Tiwari was instrumental in getting him arrested in that dacoity case.

Likewise, prior to the present incident, a search was made by the police at the house of the accused Ramayan in connection with some dacoity in village Mairwa and he also suspected Ram Nagina Tiwari to be behind it. Thus, there was enmity between Ram Nagina Tiwari and both these accused from before. The accused Kaushal was a relation of the accused Ram Parikshan. Ramayan and Ram Bilas were friendly to Ram Parikshan. The informant herself used to look after her cultivation in the village and at the time of incident she was at her sugarcane field to watch it. The field was situated about 100-150 paces away in the southern side of her house. Her husband Ram Nagina Tiwari was going to his school and the field aforesaid fell on his way. Her husband was to hand over the key of the house to her. She was sitting on the mend of her field and her husband was going to her along the mend lying in between her field and that of one Mangal. All the present accused, armed with spears and lathis, appeared there and started assaulting Ram Nagina Tiwari with these weapons. Kaushal had a lathi and the remaining were armed with spears which they used in assaulting him. She and her husband Ram Nagina raised alarm attracting Dudhnath PW 5, Dal Singar PW 6, Ram Kripal, Ram Hari Shukla and many others. They witnessed the incident and tried to apprehend the accused but in vain. The four assailants made their escape good. Ram Nagina was badly injured as a result of the injuries caused to him by the accused persons by their weapons aforesaid and died there instantaneously. She got report prepared by Ram Hari Shukla and sent the same through Harindar son of village Chaukidar to the police station where chick F.I.R. was prepared by Head Constable Mohd. Rais PW 1 and a case was registered. The investigation was taken up by the I.O. who reached to the spot and busied himself with the activities related to investigation. The dead body of the deceased was sealed with the preparation of inquest and other papers in the presence of the witnesses and sent for post mortem through constable Hari Prasad Yadav PW 3.

3. Post mortem over the dead body of the deceased was conducted by Dr K.P. Verma PW 7 on 1.9.1978 at 10.45 A.M. The deceased was aged about 30 years and about one day had passed since he died. The following ante-mortem injuries were found on his person:

1. Incised wound 3 cm x 1/2 cm x bone deep on right side eyebrow. Clotted blood present.
2. Incised wound 5 cm x 1/cm x bone deep on right side on head, 5 cm above the right ear. Clotted blood present.
3. Incised wound 4 cm x 1/2 cm x muscle deep on right side on head, 4 cm posterior to injury No. 2. Clotted blood present.
4. Incised wound 4 cm x 1 cm x bone deep on left side posterior part of head, 5 cm posterior to the left ear. Clotted blood present.
5. Incised wound 8 c x 1/2 cm x bone deep on left side on occipital region. Clotted blood present.

6. Incised wound 10 cm x 1/2 cm x bone deep on posterior part on the head. Clotted blood present.
7. Contused swelling 10 cm x 8 cm on right side on face. On cut, ecchymosis present.
8. Multiple contusion in an area of 10 cm x 10 cm on right shoulder joint. On cut, ecchymosis present.
9. Multiple contusion in an area of 8 cm x 4 cm on lateral aspect of the right upper arm.
10. Abrasion 4 cm x 3 cm on lateral aspect of the right elbow joint.
11. Contused abrasion 3 cm x 2 cm on lateral aspect of the right forearm.
12. Contusion 5 cm x 3 cm on right side of mandible. On cut, ecchymosis present.
13. Contusion 5 cm x 4 cm posterior part on the left side on neck. On cut, clotted blood present.
14. Multiple contusion in an area of 12 cm x 8 cm on posterior part of the left shoulder joint.
15. Multiple contusion in an area of 6 cm x 5 cm on lateral aspect of the left upper arm.
16. Contusion 4 cm x 2 cm on lateral aspect of the left forearm.
4. On internal examination, frontal and temporal bones were found fractured. Brain was congested with clotted blood. Base of skull was also fractured. The cause of death was shock and haemorrhage as a result of head injuries. As per the Doctor, all injuries of the deceased taken together could also be sufficient to cause his death.
5. The defence was of denial and false implication due to enmity.
6. The prosecution in all examined seven witnesses. Out of them, Smt. Padmawati PW 4 wife of the deceased, Dudhnath PW 5 and Dal Singar PW 6 were the eyewitnesses. The accused filed certain papers but did not adduce any oral evidence in defence.
7. The trial court recorded acquittal along these lines: The F.I.R. was delayed; motive was not proved; medical evidence was in conflict with ocular testimony which was of highly inimical and interested witnesses and that no independent witness was examined.
8. We have heard Sri Devendra Upadhyaya, learned A.G.A. from the side of the State and Sri D.N. Wali, learned counsel for the accused respondents. We have also perused the evidence on record with care.
9. The submission from the side of the State is that the findings recorded by the

trial judge were perverse based on insignificant aspects. According to the learned A.G.A., the testimony of the three eyewitnesses fully established the guilt of the accused persons and there was no meaningful conflict between the ocular testimony and medical evidence. On the other hand, the counsel for the accused respondents has supported the reasoning of the trial court to justify the acquittal.

10. Having regard to the post mortem report of the deceased and testimony of Dr K.P. Verma PW 7 who conducted autopsy on his dead body, it admitted of no doubt that the deceased was the victim of violence and had died of the injuries sustained by him. The Doctor also clearly opined that the ante-mortem injuries found on the person of the deceased could be caused on the date and the time as claimed by the prosecution. The Investigating Officer had also taken in possession from the spot blood stained and simple earth, blood stained lathi and shoes of the deceased, fards of which had been prepared. Therefore, the factum of the incident and murder of Ram Nagina Tiwari on the given date and time at the complained spot was beyond doubt. In fact, it was not seriously disputed either by the accused. The defence of the accused was that they had been falsely implicated on account of enmity. The prime question, therefore, was as to whether the accused respondents or any of them were/was the culprit(s) who committed this crime.

11. It is well settled that in an appeal against acquittal the appellate court though entitled to appreciate the evidence, would not interfere in the order unless it finds the view of the court acquitting the accused to be unreasonable and perverse. With the assistance of the counsel of the parties, we have gone through the evidence on record with a view to find whether the view favourable to the accused taken by the lower court is based on proper appreciation of evidence or is perverse. Having done so, we are firmly of the view that there are two sterling factors which justify acquittal. First is that there is apparent conflict of the medical evidence with ocular testimony delivered by the so-called eyewitness. Though the individual weapons of the accused respondents were not stated in the F.I.R. which was the first version of the prosecution and only omnibus recital was made that the accused were armed with lathi and spear but it may be ignored on the premise that the F.I.R. is not an encyclopaedia of every minute detail. Anyway, it came to be stated by the eyewitnesses that the accused Ram Parikshan, Ramayan and Ram Bilas were armed with spears and Kaushal had a lathi. Four accused allegedly wielded these weapons in assaulting the deceased. It was specifically stated by Padmawati PW 4 that bhala wielding accused used the same in piercing manner in causing injuries to her husband. The fact, however, is that the deceased did not sustain even a single punctured or penetrating wound out of six incised wounds sustained by him described as ante-mortem injuries No. 1 to 6 in the post mortem report. Further, five incised wounds were on the head. The remaining one was on right side of the eyebrow (ante-mortem injury No. 1). It was also unlikely that as many as three accused, namely, Ram Parikshan, Ramayan and Ram Bilas would and could concentrate striking Bhala blows only on head and on right side of eyebrow (without causing

a single punctured and piercing wound). In ordinary course, bhalas (piercing weapons) would have been used in their normal way of causing punctured wounds. It is the own testimony of Padmawati PW 4 that bhalas were being wielded by the three accused piercingly during the incident. Another aspect of the matter is that only one accused Kaushal allegedly wielded lathi, but truth of the matter is that the blunt weapon injuries which were caused by this single accused were as many as ten in number which outnumbered in great deal six incised wounds caused by as many as three accused wielding bhalas. Thus, there was apparent conflict between the medical evidence and ocular testimony incapable of being reconciled by any amount of argument and persuasion. The trial judge has elaborately discussed this aspect of the matter and we find ourselves to be in agreement with him.

12. Secondly, the presence of the so-called three eyewitnesses at the time of incident was quite doubtful. There were highly interested and inimical too against the accused respondents. The conflict between the medical evidence and ocular testimony itself gave impression that they simply spoke on the basis of their imagination. Padmawati PW 4 claimed that at the time of incident, she was watching her sugarcane field. The deceased was allegedly going to his school and was coming to her to hand over the key of the house to her. She stated that the key with her husband had fallen on the ground at the time of the incident and it remained there till the Investigating Officer arrived. However, the Investigating Officer did not find any key near the dead body of the deceased. She had earlier come to the field to watch it and the children had already gone to the school. The incident allegedly occurred in the field of Mangal which was at a distance of 4 or 5 paces from the mend where she was sitting in her own field. She also stated that her husband fell down fluttering on the ground on being assaulted by the accused. Her conduct was most unnatural that she did not even go and touch his body to ascertain whether he was still alive or completely dead. As gush of natural impulse, she would have fallen on her and there would have been some physical evidence of the smearing of her own clothes with the blood of the deceased while so coming in his contact after the running away of the accused. Nothing of the kind was done by her which is unnatural, indeed.

13. The deceased himself was a person of criminal antecedents. His wife admitted that he had been challaned in a number of dacoity cases. He was also caught in connection with illicit arms as also u/s 399/402 IPC. When interrogated that there was land litigation between her husband and Ram Parikshan, she avoided to answer this question. She did not answer other inconvenient questions also. She made non-committal reply to a question that Ram Parikshan accused had lodged a report against her husband in 1972 and that Ram Parikshan had lodged another report against her husband, Dudhnath PW 5 and Dal Singar's son Jagdish.

14. Dudhnath PW 5 also avoided answering inconvenient questions. When questioned that on 4.12.1975 Ram Parikhsan had lodged an F.I.R. against him,

deceased Ram Nagina, Dal Singar etc., he simply stated that he did not know about it. He contradicted Padmawati by saying that after about 1 - 1 1/2 hours, he came back to his house and Padmawati also went to her home. She did not come back to the spot at the arrival of the Investigating Officer. He, Dal Singar, Ram Kripal and Ram Hari Shukla showed the spot to him. He claimed that Ram Nagina had received lathi injury on his leg but as per post mortem report he had not sustained any such injury.

15. Dal Singar PW 6 was no better. He admitted that earlier to the present incident, Sukhdeo (uncle of the accused Ram Bilas) litigated with him in respect of land. In that case, Ram Nagina (deceased of the present case) was his witness. To all other questions as to previous litigation with some of the accused, he pleaded ignorance.

16. Ext. Kha-1 is the copy of F.I.R. dated 4.12.1975 lodged by Ram Parikshan against Ram Nagina, Jagdish Singh (son of Dal Singar Singh PW 6), Dudhnath PW 5 and one Kripal Singh. Ext. Kha-2 is the copy of F.I.R. lodged by Ramayan (present accused) against Jagdish (son of Dal Singar PW 6) dated 28.2.1978. Ext. Kha-3 is the copy of F.I.R. dated 27.11.1979 lodged by Ram Parikshan (present accused) against Ram Nagina Tiwari (deceased). Ext. Kha-4 is the copy of F.I.R. dated 9.9.1961 lodged by Sukdeo (uncle of Ram Bilas) against Dal Singar PW 6 and another. Ext. Kha-5 is the certified copy of the plaint of the case filed by Dal Singar PW 6 and another against Sukhdeo (uncle of Ram Bilas accused) and two others under Sections 229-B of U.P.Z.A. & L.R. Act on 27.9.1974 in the Court of S.D.M., Sadar. Exts. Kha-6 and 7 are the certified copies of the statements of Ram Kripal and Ram Nagina (deceased of this case) in favour of Dal Singar PW 6. Ext. Kha-8 is the copy of chargesheet dated 18.10.1976 submitted by the Investigating Officer in Crime No. 132 under Sections 399 and 402 IPC of P.S. Khampur against Ram Nagina (deceased) and others. Ext. Kha-9 is the certified copy of chargesheet dated 19.8.1976 submitted by the Investigating Officer in Crime No. 124 u/s 379 IPC etc. against Ram Nagina (deceased) and others.

17. So, close scrutiny of the so-called eyewitnesses and the documents filed from the side of the accused indicated that Ram Nagina himself was a man of criminal antecedents. The scrutiny of evidence also indicated that the two eyewitnesses Dudhnath PW 5 and Dal Singar PW 6 were either inimically disposed against some of the accused or were thick with Ram Nagina. All these factors prompted them to stand as eyewitnesses of the present crime relying on their imagination.

18. Ram Nagina had scores of enemies other than the present accused. The possibility was not unlikely that he was done to death by some other enemies and the present accused had falsely been implicated on account of old enmity on the basis of tainted testimony of so-called eyewitness. The ocular testimony, as discussed above, did not even agree with the medical evidence.

19. So far as Kaushal accused was concerned, he was the son-in-law of Naujadik

Tiwari. Naujadik Tiwari and Ram Parikshan were uncle and nephew in relation to each other.

20. On the above analysis, we find that the view taken by the trial judge is just and quite reasonable, not suffering from any perversity. It is not a case of misreading of evidence either. No doubt, Ram Nagina was the victim of violence and he was mercilessly murdered, but the court is to be guided by the evidence on record and the accused respondents could not be branded as the culprits on mere conjectures and on the basis of unreliable and untrustworthy evidence of the eyewitnesses running counter to medical evidence.

21. Finding no merit in this appeal, we hereby dismiss it.

22. Certify the judgment to the lower court.