

(2005) 11 AHC CK 0017

In the Allahabad High Court

Case No : Government Appeal No. 1262 of 1981

The State of U.P.

APPELLANT

Vs

Har Swarup Sarswat

RESPONDENT

Date of Decision : 11-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116
Penal Code, 1860 (IPC) — Section 147, 182, 211, 304, 307

Citation : (2005) 11 AHC CK 0017

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

Bench : Division Bench

Advocate : M.C. Joshi and A.G.A, for the Appellant; Apul Misra and P.N. Misra, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—These two government appeals are connected with each other having arisen from the judgement dated 22.12.1980 passed by IV Additional Sessions Judge, Farrukhabad in S.T. Nos. 324 of 1979 and 33 of 1980 which were tried together. The respondent in Government Appeal No. 1262 of 1981 is Har Swaroop Saraswat where as respondents in Government Appeal No. 1265 of 1981 are Hirday, Deepak, Deputy alias Gopal Manohar, Om Prakash, Ram Autar and Balram. All of them came to be acquitted inter alia for rioting and murder by the impugned judgement. There was another accused Ashok (besides the above named seven) whose case had been separated. The accused-respondent Deputy alias Gopal Manohar died during the pendency of the appeal and the same abated in respect of him under order dated 17.8.2005. We propose to decide both the appeals together.

2. The relevant facts as emerging from the F.I.R. and the evidence adduced in the Court may be set forth for appreciation of subsequent discussion. The incident occurred on 9.3.1979 at about 8.30 P.M. on Bank Road in Mohalla Mahavirganj, Police Station Kotwali, District Farrukhabad and the written F.I.R.

was lodged by Kali Charan PW 1 (father of deceased Chandra Prakash alias Chandru) the same night at 9.15 P.M. He claimed himself to be an eyewitness. The deceased Chandra Prakash alias Chandru was elected as manager of Pt. Durga Prasad Badri Prasad College about 2-21/2 months before the incident. The accused Har Swaroop Saraswat who was a member of erstwhile management committee of the college did not like it. He had offered threats to the deceased to put an end to his managership on the point of gun. The proceedings under Sections 107/116 of Cr.P.C. had also been initiated by the police of P.S. Kotwali on the basis of the said threat. The accused Ram Autar and Balram were teacher and peon respectively in the said College. Earlier they were the henchmen of Har Swaroop Saraswat but later on pretended to be friendly with Chandra Prakash alias Chandru, deceased.

3. On the eventful day, these two took away Chandra Prakash alias Chandru from his house at about 7.00 P.M. to the house of the Principal Ram Dulare Pathak on the pretext of urgent work to be conducted. When Chandra Prakash did not return even after an hour, Kali Charan PW 1 and his another son Satya Prakash PW 2 (who was also examined as eyewitness) went to the house of the Principal to fetch Chandra Prakash. Kali Charan had a sweetmeat shop and presence of Chandra Prakash was needed to settle the account of a milkman. When these two witnesses were returning from the house of the Principal with the deceased at about 8.30 P.M., the accused-persons appeared at the turn of Bank Road; Har Swaroop Saraswat cried aloud mouthing abuses for Chandra Prakash that he had come. All of them proceeded to encircle Chandra Prakash. Har Swaroop Saraswat was armed with gun whereas Hirday, Deepak and Deputy alias Gopal Manohar were armed with country made pistols. Om Prakash had a Pharsa and Ashok was armed with a knife. Kali Charan and Satya Prakash raised shouts attracting Bhanu Prakash (Kali Charan's son) and few others, namely, Girish Chandra, Suresh and Deen Dayal. Ashok knifed Chandra Prakash from the back side and Deepak opened shot on him from behind. Chandra Prakash fell down whereupon Har Swaroop Saraswat opened shot in his abdomen. Om Prakash started assaulting Chandra Prakash with Pharsa. Kali Charan, Satya Prakash and other witnesses made an attempt to proceed ahead to save Chandra Prakash. But Hirday and Deputy alias Gopal Manohar accused opened fire towards them threatening of their lives. After committing the crime, the culprits made their escape good. On the lodging of the F.I.R. by Kali Charan, a case was registered and investigation followed as usual at the hands A.S.I. V.C. Basdeo PW 10. The dead body after being sealed was sent for post mortem which was conducted by Dr. Subhash Chandra Goel PW 7 on 10.3.1979 at 3.30 P.M. The deceased was aged about 32 years and about one day had passed since he died. In all 25 ante mortem injuries were found on his person. Out of them, 19 were incised wounds on different parts of his body. There was 1 stab wound in abdomen. There were 3 gun shot wounds of entry and 2 of exit. All the three gunshot wounds of entry were on abdomen. The cause of death was shock and haemorrhage as a result of ante mortem injuries.

4. The defence was of denial and false implication.

5. At the trial, the prosecution in all examined ten witnesses. Out of them. Kali Charan (informant) PW 1 and Satya Prakash PW 2 were eyewitnesses. Dr. Subhash Chandra Goel PW 7 had conducted autopsy on the dead body of the deceased. Dr. Krishna Kumar Singhal PW 9- Assistant Medico-Legal expert to the Government of U.P. was examined to clarify this aspect of the matter as to by which weapon the injuries found on his person could be sustained. V.C. Basdeo PW 10 A.S.I, was the Investigating Officer and the rest of the evidence was more or less of formal nature which does not need any particular mention. Ram Dulare Pathak, Principal examined as CW 1, however, stated that he was not present at his house on 9.3.1979 as he had gone to his village after visiting the Office of D.I.O.S. He did not know whether the deceased had reached his house that evening with Ram Autar and Bal Ram accused. According to him, he had returned from his village on 10.3.1979 and then only he saw the dead body of the deceased.

6. The trial Court recorded acquittal primarily disbelieving the presence of so-called eyewitnesses-Kali Charan PW 1 and his son Satya Prakash PW 2. The availability of light at the spot was also doubted. The trial Court also observed that there was no independent witness, though the names of some of them were mentioned in the F.I.R.

7. We have heard Sri M.C. Joshi, learned A.G.A. from the side of State and Sri P.N. Misra, learned senior advocate from the side of the accused-respondents in these two appeals. The record has been carefully perused. The learned A.G.A. has argued that the trial judge recorded acquittal on faulty appreciation of evidence. The submission is that the presence of eyewitnesses, namely, Kali Charan PW 1 and Satya Prakash PW 2 at the spot could not be disbelieved. Their testimony was in conformity with medical evidence contained in post mortem report. Thus acquittal could not be recorded giving undue importance to triflings. On the other hand, Sri Misra argued that the view taken by the trial judge is based on proper appreciation of the evidence, not suffering from any flaw whatsoever. The trial judge, argued Sri Misra, has given weighty reasons in support of acquittal.

8. We have given our anxious consideration to the arguments advanced from the two sides and have carefully cross-checked the findings of the trial Court with the evidence adduced at the trial. Having done so, we are of the opinion that the acquittal recorded by the trial judge is backed by solid reasons and the findings recorded are quite apt, just and reasonable. On scrutinizing the entire evidence adduced at the trial, we find ourselves in agreement with trial judge on the principal question that the presence of the so-called eye-witnesses Kali Charan PW 1 and Satya Prakash PW 2 on the spot at the time of incident could not at all be believed. We wish to state our reasons for being in agreement with the acquittal recorded by the trial Court.

9. It should be observed in the first instance that reason assigned by the prosecution for the deceased Chandra Prakash's going to the house of principal at the behest and insistence of accused Bal Ram and Ram Autar was not at all convincing. He being the manager of the college stood on a higher pedestal than the principal. Therefore, in ordinary course he would have required the principal to come and meet him at his residence if there was any urgent business to be conducted with regard to the affairs of the college. The prosecution has projected it to be a planned murder. It was illogical that two of the accused, namely, Ram Autar and Bal Ram would have gone to the house of Chandra Prakash to call him to accompany them to the house of the principal, unnecessarily creating evidence against them. It would be recalled that the Principal Ram Dulare Pathak examined as CW 1 even denied his presence at his house in the fateful evening/night. There was no evidence that he (Principal) was close or friendly with accused and antagonized against Chandra Prakash, deceased. The statement of principal that he was not present at his house that evening/night was running in the teeth of the testimony of Kali Charan PW 1 that when he had reached at the house of the Principal to fetch his son Chandra Prakash, he (Principal) was there and had asked him to stay for some time, but he returned with his sons Satya Prakash and Chandra Prakash. Further, it is to be taken note of that the incident occurred a few days before the Holi festival. The sweetmeat shop of Kali Charan used to open from 7.30 A.M. to 10.30 P.M. It was a busy season for him as preparation of sweetmeat for Holi festival was to start. His explanation was unconvincing that he and his son Satya Prakash went to call Chandra Prakash from the house of principal as a milkman's account was to be settled at the shop. He could not name the milkman as to who he was. Moreover, even if the presence of Chandra Prakash at the shop was required to settle the account of milkman, either he or his son Satya Prakash could go to call him from the house of the principal. It was hardly necessary for both of them to leave the shop just for calling back Chandra Prakash from the house of the principal. It could justifiably be inferred that the story of Chandra Prakash having gone to the house of the principal at about 7.00 P.M. at the instance of accused Ram Autar and Bal Ram and these two eyewitnesses having gone to the house of the principal to call him back to settle account of milkman was coined so as to designate them as eye witnesses falsely creating an opportunity for the same.

10. As we mentioned earlier, the deceased received as many as 25 ante mortem injuries on his person. Out of them 19 were incised wounds, one stab wound, three gunshot wounds of entry and two of exit. It is a fact that so-called two eyewitnesses Kali Charan PW 1 and Satya Prakash PW 2 did not receive any injury on their person, though the evidence has been led to this effect that two of the accused Hirday and Deputy alias Gopal Manohar had opened shots on them. The version of Kali Charan PW 1 is that such shots had been fired by them from a distance of about 1-2 paces. However, none of them sustained any injury. It is somewhat illogical that they would have escaped unhurt even when fired from the close range of two paces. We should not be misunderstood to be laying down

that an eyewitness cannot be believed unless he himself receives injury in the same incident. Indeed, each case has to be judged on its own facts. Needless to say, blood relationship inter se father, son and brother is extremely thick. In the present case, it does not stand to reason that Kali Charan PW 1 (father of the deceased) and Satya Prakash PW 2 (brother of the deceased) would have remained passive spectators to the gory incident of infliction of a large number of injuries upon the deceased by the accused as has been sought to be shown by their evidence. They, being the father and brother of the deceased, would have leapt forward to come to the rescue of the deceased even at the risk of physical injury to themselves. In any view of the matter, they would have done something within their power to play their part which could be in the form of throwing brickbats etc. towards the perpetrators of the crime to hurt some of them so as to dissuade them from continuing infliction of injuries on the victim which they did without any hindrance. The impression rather generates that the incident actually took place when there was none around. It was for this reason that the perpetrators, whosoever they were, inflicted numerous injuries on the victim leisurely without any fear of resistance from any quarter. The incident took place in a thickly populated area as is gleaned from the site plan prepared by the Investigating Officer. No independent person of the locality came forward to support the story of the prosecution even for the limited purpose that any of them had heard gun shot or had found Chandra Prakash lying badly injured or dead on the site at the alleged time.

11. The prosecution also could not prove any common bond amongst accused persons which could have joined them for committing this crime.

12. There are other two important factors which cast cloud on the prosecution story as put forth and sought to be buttressed by the testimony of so-called eyewitnesses Kali Charan PW 1 and Satya Prakash PW 2. As per the inquest report Ext. Ka-12, only one foot of the deceased had shoe. No explanation came forth through the testimony of the two so-called eyewitnesses as to the missing other shoe. Kali Charan PW 1 and Satya Prakash PW 2 could well explain it if the incident had actually taken in their presence. Moreover, it is noted from the cross-examination of Dr. Subhash Chandra Goel PW 7 who conducted autopsy on the dead body of the deceased that there was slush and mud on the face of deceased. The prosecution could not explain the presence of the same. The incident took place on the Bank Road where there was no mud or slush. Obviously, the two aspects we have referred to remained obscure, making dent in the prosecution case and the presence of so-called two eyewitnesses at the spot at the time of incident.

13. Ext. Kha-5 is a copy of electric schedule of January to March, 1979 of the street light of town Farrukhabad to Fatehgarh. It appears from it that from 9.3.1979 to 15.3.1979, there was no street light. As per the site plan, there was electric pole with electric tube at point shown by figure 22. Even if electric pole existed, there was no electric light during the period 9.3.1979 to 15.3.1979 as

per Ext. Kha-5. So, to come to the point, the availability of the light at the spot at the time of the incident was also rendered doubtful.

14. Before we take leave of the matter, we also think it proper to refer to another important aspect that the deceased was a person of unsavoury antecedents. The prosecution brought on record certain documents (Exts. Kha 1, 2, 3 and 4). Ext. Kha 1 is a complaint filed against him he lay the III Additional Sessions Judge in Case No. 352 of 1996 under Sections 182 and 211 I.P.C. for giving false evidence. Ext. Kha-2 is a copy of charge-sheet inter alia u/s 307 I.P.C. (Case Crime No. 290) submitted by police of Police Station Farrukhabad. Ext. Kha-3 is a copy of complaint against him under Sections 147: 323: 452: 504: 505/509 I.P.C. which related to grabbing of property. Ext. Kha 4 showed his involvement in a case inter alia u/s 304 I.P.C. The streak of his personality came to be revealed from the cross-examination of Kali Charan PW 1. He stated that the house in which he was living belonged to a Masjid. The house had two parts. For the marriage of his daughter (sister of the deceased Chandra Prakash) on 19.2.1979, the other part of the house was taken by the deceased Chandra Prakash from the persons managing the affairs of the Masjid. Joining two portions, the marriage was performed. But that portion was not vacated even after the performance of the marriage. It continued to be in the possession of the family of Kali Charan and Chandra Prakash not only on the date of the incident, but even till 4.9.1980 when Kali Charan PW 1 was examined in the Court. A suggestion was made to the witness that a quarrel had taken place between him and his son Chandra Prakash on the one hand and manager of the Masjid on the other for the vacation of the portion of the house which was taken for the performance of marriage of his daughter. Of course, he denied it. The number of injuries inflicted on the person of the deceased indicated that the perpetrator(s) of the crime, whosoever they were, had translated their deep seated hatred against the deceased, wreaking vengeance in most merciless and diabolical manner. Seemingly, the deceased, a bully, could have no dearth of enemies storing venom against him because of his overbearing activities. There was very reasonable probability of the accused having been nominated as the culprits out of suspicion because of some of them being associated with the College of which he (deceased) had become the manager.

15. In view of the above discussion, we do not locate any merit in these two appeals. Both the appeals (Government Appeal No. 1262 of 1981 and Government Appeal No. 1265 of 1981) are dismissed, affirming the acquittal recorded by the trial Court.

16. Judgment be certified to the lower Court immediately.