

(2005) 11 AHC CK 0001

In the Allahabad High Court

Case No : Government Appeal No. 1278 of 1981

The State of U.P.

APPELLANT

Vs

Ram Bilash, Ram Autar and Ram Bahadur

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 302, 34
Penal Code, 1860 (IPC) — Section 399, 402

Citation : (2005) 11 AHC CK 0001

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

Bench : Division Bench

Advocate : M.C. Joshi and A.G.A, for the Appellant; K.S.Chauhan, Prabhakar Dwivedi and Rajjan Singh, for the Respondent

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Aggrieved by the judgment and order of acquittal of accused respondents passed by IV Additional Session's Judge, Mainpuri, on 21.2.1981 in Session's Trial No. 368 of 1980, State v. Ram Bilas, Ram Avtar and Ram Bahadur, for offences u/s 302/34, Police Station Kishni, District Mainpuri, the State has approached this Court in the instant appeal.

2. Out of the three accused respondents, Ram Bilas and Ram Bahadur died during the pendency of the appeal in the Court and the same abated against them under order dated 26.7.2005 and it now survives only against accused respondents Ram Avtar.

3. The prosecution allegations were that Ram Bilas (father of accused Ram Avtar), informant Sri Kishan and P.W. 3 Suresh were the residents of village Kutupur under Police Station Kishni, District Mainpuri. Suresh, originally a resident of village Dikhiyana District Kanpur, was a teacher in village Hasanpura district Farrukhabad. The accused Ram Bahadur was a friend of accused Ram bilas and was a resident of village Chakain, which was at a distance of four miles from Kutupur.

4. On the occasion of Holi, preceding the incident, Ram Bilas was arrested and jailed by the police. He was released a month prior to the incident. Ram Bilas bore enmity with Suresh as he was of the view that the latter got him arrested by the police. At about 12.30 P.M. on 13.6.1980, the three accused chased P.W. 3 Suresh and fired at him when he had come out of his house. Ram Bilash was armed with rifle; Ram Autar had a pistol and Ram Bahadur had a single barrel gun. Suresh took shelter behind the wall and the fires evaded him but hit Guddo Devi (Niece of informant and daughter of Raj Bahadur), Smt. Maya Devi wife of Raj Bahadur, Munni @ Sneh Lata (Niece of P.W. 3 Suresh) and an infant girl Km. Neeraj, in the lap of Smt. Maya Devi. Guddo Devi and Munni Devi @ Sneh Lata succumbed to the shots and rest of the two- Maya Devi and Km. Neeraj received injuries. This incident was witnessed by the informant Sri Kishan (PW1), Puttu Singh (PW2), Rameshwar Dayal, Shyam Sundar, Banwari and many others. After the accused made their escape good, Sri Kishan got the FIR scribed by Nepal Singh and lodged it at the Police Station Kishni, covering a distance of seven miles, at 6.30 P.M. on that day itself. Head Constable, Bhopal Singh prepared Chik FIR (Ex. Ka 4) and GD (Ex. Ka5). Sub Inspector S.R. Sehra P.W. 6 started the investigation, recorded the statements of informant and other witness, conducted inquests (Ex. Ka 7 and Ka8) next day morning and prepared other relevant papers (Ex. Ka 9 to Ka 16) and dispatched the two dead bodies for post mortem. He got the injured Maya Devi and Km. Neeraj medically examined by P.W. 5 Dr. S.C. Dubey. After his transfer S.O. Suraj Pal Singh (not examined by the prosecution) submitted charge sheet (Ex.Ka 21) against the accused respondents.

5. On 15.6.1980, Dr. D.P. Misra, P.W. 9 conducted post mortem (Ex. Ka 22 and Ka 23) on the dead bodies and found following antimortem injuries. Km. Guddo had sustained one gun shot wound of entry 1c.m. x 1c.m. x cavity deep on the left side chest with fracture of sixth rib. One metallic shot was found inside the body.

6. Munni Devi @ Sneh lata had sustained three firearm entry wounds of the same size 1 cm. x 1c.m. on the top of left shoulder, right side lower part back and left side back. She also had two exit wounds of 1.5 c.m. x 1.5 c.m. corresponding to entry wounds and from her body one metallic shot was recovered.

7. Out of the two injured, Smt. Maya Devi had one abrasion on the back of left side of head 1½ c.m. x ½ c.m., 5 c.m. above the left ear and Km. Neeraj had one lacerated wound 1 x 5c.m. skin deep on the left parietal bone on which coagulated blood was present. All the injuries of both the injured were simple in nature. They were examined by P.W. 5 Dr. S.C. Dubey on 14.6.80 at 4.15 and 4.20 P.M., respectively.

8. The prosecution, to prove the charge, examined P.W. 1 Sri Kishan (informant), P.W. 2 Puttu Singh, P.W. 3 Sursh, P.W. 4 Smt. Maya Devi (injured) as witnesses of fact. P.W. 5 Dr. S.C. Dubey (examined the injured), P.W. 6 S.R. Sehara S.I. (First

I.O.), P.W. 7 Constable Raghuraj Singh, (who had taken dead body to mortuary and had taken chithi majrubi and the injured P.W. 8 Har Swaroop Singh (witness of inquest) and P.W. 9 Dr. D.P. Misra (Doctor of Post Mortem) as formal witnesses. The trial Court examined Ram Babu Diwedi, a jail constable as CW 1.

9. The defence of the accused was of denial and false implication due to litigation with informant and P.W. 3 Suresh and further that the deceased had died from the firearms of decoit Chotey Singh and Gujja who were being haboured by informant and Suresh.

10. The trial Court, after a detailed discussion and analysis of evidence, disbelieved the prosecution case and concluded that the prosecution had failed to bring home the guilt of the accused and the likelihood of the death being caused by the firearms of decoit could not be ruled out and, therefore, it recorded acquittal.

11. We have heard Sri. M.C. Joshi, learned A.G.A. in support of the appeal and Sri Prabhakar Diwedi Advocate in opposition.

12. The learned A.G.A. canvassed that the impugned judgment of acquittal is wholly perverse and the trial Court committed miscarriage of justice in not relying upon the prosecution witnesses. He submitted that all the prosecution witnesses had supported the prosecution case to the hilt and P.W. 2 and 3 were named in the FIR and they had seen the incident. P.W. 4 was injured witness and, therefore, the presence of these witnesses on the spot could not be doubted. He harangued that post mortem and medical reports countenance the case of the prosecution and FIR being prompt there was no chance of embellishment and consultation. He concluded by submitting that it was a broad day light incident and the prosecution case against the accused respondent was fully proved. According to him, the appeal deserves to be allowed and the respondent accused are liable to be convicted for offence of murder.

13. Refuting the submissions of the learned A.G.A., Sri Diwedi, on behalf of respondents accused, contended that the post mortem report and the injury report did not further the case of the prosecution and rather contradicted. He submitted that the presence of P.W. 1, 2 and 3 at the time of the incident was doubtful and P.W. 4 was giving a tainted version of the incident. She had not seen the incident and her injury report belied her statement. He further argued that the FIR was delayed and was the outcome of deliberation and consultation and the place of incident in the case was not fixed. He impressed upon the contradictory and unacceptable nature of evidence. He argued that delay in inquest and examination of injured persons was intentional to cook up the FIR. He in the last submitted that the view of the trial Court was reasonable and reasons well founded, not suffering from any infirmity and perversity. He urged that the prosecution failed to establish the charge and, therefore, the impugned judgment should be upheld and appeal dismissed.

14. On the submissions made by the rival sides we have perused the record of

the case and gone through the evidence ourselves. The allegation and the evidence against the accused was that each of them fired single shot from two types of weapons- gun and country made pistol from quite a distance (as there being absence of blackening and tattooing) as a result of which the two deceased and the two injured received injuries. However, a perusal of post mortem reports and injury reports shows otherwise. It is significant to note that the two deceased had received four gun shot wounds of entries and two wounds of exits. All the entry wounds were all of the same dimensions 1 c.m. x 1 c.m. and both the exit wounds were also of the same size 1.5 cm x 1.5 cm. This does not fit in with the prosecution version of use of two types of weapons by the assailants and shows that only one type of weapon was used, which was neither the gun nor the country made pistol. It is because of this reason that at the later stage, during the trial rifle was introduced in the case as these injuries were rifle shots. This made the presence of witnesses on the spot doubtful and indicated that they had not seen the incident. The injury reports further erode their testimony. The two injured, according to P.W. 5 Dr. S.C. Dubey did not receive injury by Firearm. Their medical reports show that Smt. Maya Devi received only one abrasion on left side of head backside and Km. Neeraj received one lacerated wound skin deep on the left parietal bone. The injuries of both could not be caused by rifle as they were the result of friction and assault by blunt object, but none of the accused was armed with any blunt object. These facts are totally inconsistent with the prosecution case and rendered the testimony of witnesses unbelievable. The belated medical examination of the injured after a gap of more than twenty-four hours, on 14.6.1980 at 4.15 PM further made the prosecution case doubtful. According to the injured her clothes were soaked with blood but they were never taken in possession and this fact did not find mention anywhere. Both the injured were not taken to the police station at the time of lodging of FIR, nor any attempt was made to get them medically treated for the injuries, immediately and they were made to wait till they were got examined by the police. We, thus, are of the view that none of the witnesses of fact had witnessed the incident and they were deposing falsely against the accused because of enmity and strained relationship.

15. Otherwise also the evidence of witnesses could not inspire confidence. They introduced rifle in evidence given during the trial which was significantly missing in the FIR and 161 Cr.P.C. statements they made this improvement to suit the post mortem reports. P.W. 1 admitted that he was prosecuted for abduction of a girl and was convicted for five years. He was also an accused in a case u/s 399/402 IPC which was still pending. There was revenue litigation between him and the aunt of accused Ram Bilas, namely, Saraswati Devi. He admitted that his house is situated in midst of abadi but no independent witness came forward to support the prosecution case.

16. P.W. 2 did not state to I.O. that he had gone to Bidhuna and while returning he saw the incident. He did not state that he had advised Suresh to leave village for fifteen days to avoid animosity with Ram Bilas accused and on his advice

Suresh had gone to Ludhiana with his family. He failed to mention the role of instigation to the I.O. He also introduced rifle in his evidence before the Court. Accused Ram Bilas was a witness against him in a case. Ram Bilas accused had lodged an FIR of theft against his relatives Har Swaroop and Virendra Singh. He knew the distinction between rifle and gun yet he did not mention rifle to the I.O. he did not inform the I.O. that the injured and the deceased received injuries while sitting in shade.

17. P.W. 3 Suresh Babu was the grand son of Smt. Maya Devi, sister of informant Sri Kishan and was, therefore, a related witness. Though he was the arch enemy, but was left unhurt. Though a teacher, yet he was prosecuted for offence u/s 399 of 402 I.P.C. Against his brothers-Vinod, Har Swaroop and Virendra, accused Ram Bilas had lodged an FIR of theft of an engine. He was also charged by the police for pelting stones on the neighbor's house.

18. Thus from the discussion made above, we conclude that none of the prosecution witnesses can be safely relied upon to convict the accused. The prosecution utterly failed to establish the guilt of the respondents that they were the perpetrators of this crime the impugned judgment of acquittal does not suffer from any flaw or perversity. It is reasonable and does not call for any interference in appeal.

19. The appeal is hereby dismissed. The sole surviving respondent accused is on bail. He need not surrender. The lower Court is directed to make necessary entries in the relevant register and report compliance to this Court with two months.