
(1993) 11 AHC CK 0045
In the Allahabad High Court
Case No : Criminal Appeal No. 721 of 1979

Vijai Shanker alias Vijai and Ors.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-11-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302

Citation : (1993) 11 AHC CK 0045

Hon'ble Judges : D.K.Trivedi, J and K.C.Bhargava, J

Final Decision : Allowed

Judgement

D. K. Trivedi, J.—The present Criminal Appeal is directed against the judgment and order dated 2881979 passed by the 1st Additional District and Sessions Judge, Unnao, convicting the appellants under Section 148 I.P.C. and sentencing each of them to undergo two years" regorous imprisonment. He further convicted accused Vijai Shanker alias Vijai Under Section 302 I.P.C. and sentenced him to Life Imprisonment. The Additional Sessions Judge further convicted the remaining appellants under Section 302/149 I.P.C. and sentenced him to Life Imprisonment.

2. The brief facts of the prosecution case are that seven of the accused persons including the four appellants committed the murder of Balram on 1651974 at about 6.30 a.m. in village Satan near the house of one Kishan. Accused Chhunna, Tirathraj and Raj Bahadur died during the trial and hence only four of the appellants were prosecuted in this case. Appellant Vijai Shanker alias Vijai filed this appeal but thereafter he is also reported to be dead and, therefore, the appeal against Vijai Sanker alias Vijai is dismissed as abated.

3. According to the prosecution case, about two months before the present occurrence Vijai fired a fire shot at Rupan and the complainant was a witness in the said incident. It is said that due to this enmity the accused persons bore illwill and, therefore, on the date of incident, when the complainant was going to attend the call of nature and as soon as he reached near the house of Kishan, all

the accused persons armed with tire arms came out from the house of Vijai appellant and challenged the deceased. It is further said that the deceased then tried to run away but he was chased by all the accused persons and they also fired their guns on the deceased. It is further said that as soon as he reached near the house of Kishan, he received gunshot injury fired from the gun of Vijai and as a result of which he fell down in an injured condition. It is further alleged that he raised an alarm and on hearing the alarm several persons reached there and on their challenge the accused persons ran away. According to the prosecution case, Balaram was brought to Police Station Bighapur where Balram himself lodged a report at Police Station Bighapur at 9.10 a.m. The distance of Police Station Bighapur from the place of incident is said to be six miles. It is further alleged that the said report was dictated by Balram to Clerk Constable Bhagwan Singh (P.W. 7) who prepared the chik report (Ext. Ka14) and registered a case in the General Diary (Ext. Ka15). It appears that Balram was sent to P.H.C. Bighapur for medical examination and there he was medically examined by (P.W. 6) Dr. I.P. Singh when he was alive on the same day at 2.00 p.m. The distance of P.H.C. Bighapur from Police Station is two furlongs. It is further said that Doctor advised Xray, therefore, Balram was sent to District Hospital, Unnao but he died near Bighapur road crossing. It is said that Constable Raj Kishore who brought the injured at the P.H.C. informed the Police of Police Station Bighapur about the death of Balram and on this information the case was converted and one S.I. Kedar Nath Pandey was directed to prepare the inquest report. S.I. Kedar Nath Pandey thereafter prepared an inquest report (Ex. Ka6) and sent the dead body to mortuary for postmortem examination.

4. On the other hand, (P.W. 5) R. N. Singh, S.O. Police Station Bighapur in whose presence the First Information Report was lodged was entrusted with the investigation of this case and, therefore, he immediately after recording the statement of the complainant Balram, proceeded to the spot for investigation. He prepared siteplan and recorded the statements of the other witnesses. He also recovered blood stained as well as plain earth from the place of the incident. He also proved the inquest report prepared by S.I. Kedar Nath Pandey and also proved the statement of Balram recorded under Section 161 Cr PC as dying declaration (Ext. Ka12). The investigation was thereafter taken over by P.W. 2 S.I. Manohar Singh who after completing the investigation submitted chargesheet against all the seven accused persons.

5. The autopsy on the dead body of Balram was conducted by (P.W. 4) Dr H. M. Saxena, Medical Officer District Hospital, Rae Bareli on 1651974 at 4.30 P. M. The Doctor found the following injuries on the dead body of Balram deceased :

(1) Gun shot wound 1/4", diameter on the medial aspect of left elbow joint, communicating injury No. 2 under the skin and muscle. Charring and blackening present also on the wound.

(2) Gun shot wound of 1/2" diameter 1" anterior to injury No. 1 and communicating with injury No. 1 Margins were everted, it was wound of exit of

gun shot.

(3) Seven gun shot wounds 1/3" to 1/4" in diameter in an area of 21/2" X 11/2" on left side of lower back. They were all abdominal cavity deep blackening was present allround the wounds. The marging were everted and they were the wounds of entrance of gunshot.

(4) Six gun shot wounds each of 1/2" diameter in an area of 2" x 11/2" on the lateral aspect of left side of abdomen. They were abdominal cavity deep. The area was 5" from the umbilicus at 5 O'clock position. The marigins of wounds were everted and they were the wounds of exit of gun shot. All the wounds were bandaged. Peritoneum was lacerated under injuries. Abdominal cavity contained 2 Ibs. blood clots and one large shot. Stomach contained 5 Oz. of partly digested food matter. Small intestines contained small quantity of faecal matter, large intestines were lacerated at two places in an area of 2" x 2" on the left side and small quantity of faecal matter was present. Left kidney was extensively lacerated.

6. According to the Doctor death was caused due to shock and haemorrhage as a result of injuries. Doctor also proved postmortem report (Ext. Ka2).

7. The prosecution in support of its case, examined seven witnesses. Out of them (P.W. 1) Prag Narain and (P.W. 3) Hari Shanker are the witnesses of fact. (P.W. 2) S.I. Manohar Singh Submitted chargesheet in this case after completing the investigation. (P.W. 4) Dr. H. M. Saxena conducted autopsy on the dead body of deceased Balram. (P.W. 5) R.N. Singh, S.O. Police Station Bighapur conducted initial investigation and thereafter handed over the same to (P.W. 2) S.I. Manohar Singh. (P.W. 6) Dr. I.P. Singh examined the deceased Balram when he was alive and proved the injury report (Ext. Ka13) (P.W. 7) Bhagwan Singh Court Moharrir proved the EI.R. as well as the chik report and other relevant General Diary entries.

8. On the other hand the accused persons denied the prosecution case and stated that they have been falsely implicated in this case due to enmity. They did not adduce any oral evidence but filed come papers in defence.

9. The learned Sessions Judge, after considering the evidence on record came to the conclusion that the prosecution successfully proved the guilt of the appellants beyond reasonable doubt and, therefore he convicted and sentenced the appellants as mentioned above.

10. The appellants, aggrieved by the said judgment and order, filed the present appeal.

11. I have heard the learned Counsel for the appellants Shri J. N. Chaudhary and Government Advocate at great length and perused the record.

12. The main contention of the appellant's Counsel is that the finding of the Court below that the prosecution has successfully proved the guilt of the

appellants beyond reasonable doubt is not correct and in fact, the prosecution case is full of infirmities and discrepancies. He pointed out that both the eyewitnesses namely (P.W. 1) Prag Narain and (P.W. 3) Hari Shanker are highly interested and inimical witnesses. Another person namely Kallu who is also highly inimical and interested person, was present at the time of lodging of the First Information Report. He further pointed out several discrepancies which show that the First Information Report lodged by deceased Balram is not a genuine document and it appears to be a fabricated one. He further contended that investigation conducted by the Investigating Officer does not inspire confidence and therefore, no reliance can be placed on the First Information Report as well as the statement recorded by the Investigating Officer under Section 161 Cr. P.C. He further pointed out several cuttings alleged to be made by the prosecution in their papers.

13. On the other hand, the Government Advocate while supporting the findings recorded by the Sessions Judge, contended that the judgment and order passed by the Sessions Judge is a well reasoned order and the prosecution case is based on the testimony of two eyewitnesses. He further contended that, no doubt, (P.W. 1) Prag Naarain and (P.W. 3) Hari Shanker are highly inimical and interested witnesses but only on this ground their testimony cannot be thrown out. According to him the testimony of these two eyewitnesses finds support from the medical report and, therefore, their testimony cannot be discarded.

14. In the instant case it is not disputed that the prosecution examined two eye witnesses namely (P.W. 1) Prag Narain and (P.W. 3) Hari Shanker. They are highly inimical and interested persons and no other independent witness came forward to support the prosecution case. It is also not disputed that (P.W. 3) Hari Shanker is a resident of village Balakhera which is situated at a distance of six miles from the place of incident. It is also not disputed that (P.W. 3) Hari Shanker is a relation of (P.W. 1) Prag Narain. In these circumstances it is necessary to scrutinize the testimony of the two eyewitnesses with caution. As pointed out above, the First Information Report was alleged to be lodged by Balram deceased himself. The First Information Report is therefore, treated as a dying declaration of Balram. Apart from this even according to the prosecution case, only Vijai Shanker caused injuries to deceased Balram and on this basis the contention of the appellant's Counsel is that the other persons who are inimical to Kallu and other witnesses have been falsely implicated in this case. According to the prosecution case all the seven accused persons were armed with fire arms. We find force in the contention of the appellant's Counsel that some of the accused persons appear to have been roped falsely in this case. According to the prosecution case there were seven persons armed with fire arms and all of them chased the deceased and fired their fire arm but surprisingly enough the deceased did not receive any such injury. According to the First Information Report as well as in view of the statement of the eyewitnesses injury to the deceased was caused by "the fire arm of Vijai Shanker alias Vijai. It is surprising that the deceased who was running away made such difference and saw that the

shot of Vijai Shanker caused injuries to him. If seven persons chased a person and fired from their fire arms then it will not be possible for a person who is running away to see that the fire of Vijai Shanker caused injuries to him. It is the case of the prosecution that shot of Vijai Shanker caused injuries to the deceased. In any case the case of the other accused persons that they were also present and chasing the deceased and were firing their guns does not find corroboration from any other independent piece of evidence. Both the eyewitnesses namely (P.W. 1) Prag Narain and (P.W. 3) Hari Shanker in a parrotlike manner stated that they also chased and fired their arms on the deceased when he was running away, but the same is not believable in the absence of any such injuries on the body of the deceased Balram. It is also the case of the prosecution that shot of Vijai Shanker hit the deceased, therefore, it would not be possible to believe the story of chasing by seven persons and firing their fire arms by the other coaccused persons. Both the eyewitnesses are highly interested and inimical witnesses, therefore, the possibility of the fact that in order to falsely implicate the other six accused persons they have been assigned the role of firing and chasing the deceased, cannot be ruled out.

15. Apart from this, even on merits the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt, because the First Information Report which is alleged to be lodged by the deceased does not appear to be genuine. According to the prosecution case the First Information Report was lodged by Balram himself at Police station Bighapur on the same day at 9.10 a.m. It is further alleged that thereafter Balram was sent to Bighapur P.H.C. which lies at a distance of two furlongs from the Police Station. The deceased Balram was medically examined on the same day by (P.W. 6) Dr. I. P. Singh at 2.00 p.m. If the First Information Report was lodged at 9.10 a.m. as alleged by the prosecution and thereafter the deceased was sent to P.H.C. for medical examination, then in these circumstances, he must have reached P.H.C. Bighapur much earlier than 2.00 p.m. There is no evidence on record to explain the delay and the reason for not reaching P.H.C. earlier than 2.00 p.m. The contents of the First Information Report as well as the contents of the statement recorded by the Investigating Officer are similar and further the Investigating Officer has not taken any steps for recording dying declaration of the deceased by some Magistrate. In the First Information Report it is said that all the accused persons armed with guns came out from the house of Vijai accused and thereafter reached in front of the deceased Balram. It is further alleged that the deceased thereafter ran away and he was chased by the accused persons firing their guns but in spite of this neither the deceased received any injury nor any other independent persons of the village came forward to support the prosecution case. Thereafter it is said that the shot of Vijai caused injuries to the deceased which is also not believable as it is not possible for the person who is running away to distinguish the fire arm injury and say definitely that the shot of Vijai caused Injuries to him. (P. W. 6) Dr. I.P. Singh examined the injuries of deceased Balram when he was alive and prepared injury report Ext. Ka13 There are so

many cuttings in this injury report and the same has not been explained by the prosecution. It appears that injury report was prepared by the Doctor but thereafter by another pen and another ink he added some words and even cut the opinion about the arms used and mentioned that opinion about assault can be given after Xray. Again deceased Balram was examined by (P.W. 6) Dr. I. P. Singh at 2.00 p.m. and after examination he referred the deceased to District Hospital Unnao for Xray etc. It is said that body of the deceased Balram was found by S.I. Kedar Nath Pandey on the Patri of Bighapur crossing. In the inquest report it is said that Constable Raj Kishore was taking him to District Hospital but he died at Bighapur crossing. In the inquest report it is clearly mentioned that the dead body was lying on the road Patri of Bighapur crossing. It is also not disputed that Balram died at about 7.00 or 7.15 p.m. There is nothing on record as to how Balram was brought to Bighapur crossing from the Hospital. It is also not clear as to when Balram started from Bighapur Dispensary to Unnao District Hospital and further at what time he reached Bighapur Crossing. Constable Raj Kishore who brought the deceased to P.H.C. Bighapur and thereafter in whose custody Balram died has not been produced by the prosecution. In the inquest report it is said that Bus was not available but there is delay of 4 to 5 hours and, therefore, the same can not be accepted. There is some manipulations and cuttings in the entries regarding sending of the report to the S. P. Office on 1651974 but thereafter by overwriting on the digit "6", digit T has been written. This shows that the First Information Report was sent on 17th. Similarly, on the date of receipt also digit 16" has been overwritten by the digit "17".

16. Another most important feature of the First Information Report is that the same is not signed by Balram but, on the other hand, his thumb impression was affixed on the said First Information Report. On behalf of the defence it is said that Balram was an educated man and atleast he used to sign the papers. In support of this contention the defence filed a copy of the chargesheet Ext. Kha2 in which the deceased was accused and further filed copy of statement of Balaram recorded by the Court under Section 313 Cr. PC. showing that Balram signed the said statement. This clearly proves that Balram used to sign the papers and was not an illiterate person. In these circumstances how he affixed his thumb impression on the First Information Report is not being explained by the prosecution. This circumstance, in our opinion, also goes against the prosecution and throws doubt about the genuineness of the First Information Report. In these circumstances no reliance can be placed on the contents of the First Information Report as well as the statement recorded by the Investigating Officer under Section 161 Cr. PC. just after the lodging of the F.I.R.

17. As already pointed out above the other two eyewitnesses are highly interested and inimical witnesses and further their statement is full of inconsistencies and discrepancies, therefore, it would not be possible to rely on their testimony. Both the witnesses are related to each other and (P.W. 3) Hari Shanker is a resident of village Sathni Balakhera. According to him he came to this village for some work but the same has not been disclosed. (P.W. 1) Prag

Naiaian, in his statement, stated that he was sitting on the door of his house alongwith (P.W. 3) Hari Shanker. He heard the cries of Balram and on hearing the same he ran towards that side and saw that the accused persons armed with fire arms were chasing Balram. (P.W. 3) Hari Shanker also stated that he was sitting at the door of (P. W. 1) Prag Narain but as pointed out above he is a resident of another village which lies six miles away from the village of the incident. He did not disclose the business for which he was present in the village of the incident. He further admits that his statement was recorded by the Investigating Officer after about four months. Apart from this (P.W. 1) Prag Narain further admits that Balram after receipt of the injury disclosed the names of the assailants to him. This part of the story is also not probable because if (P.W. 1) Prag Narain was present at the time of incident and further if he himself witnessed the incident then the disclosure of names of the assailants to (P.W. 1) Prag Narain does not arise. This fact supports the contention of the defence that it appears that Balram was assaulted in the early part of the morning by some unknow persons and therefore, he with the help of Kallu and other eyewitnesses concocted this case against the accused persons.

18. In view of the facts mentioned above it is not possible to rely on the statement of (P.W. 1) Prag Narain and P.W. 3 Hari Shanker who had reason to falsely implicate the accused persons. In the crossexamination they admit that they were accused in z3 cases in which accused persons were witnesses. In these circumstances they have also motive to falsely name the accused persons in the criminal case. After going through the statements of these eyewitnesses and after considering v the infirmities and discrepancies in the prosecution case, in our opinion, the statement of eye witnesses does not inspire confidence and, therefore, no reliance can be placed on them.

19. In the result the appeal is allowed. The conviction and sentence awarded to the appellants by the Sessions Judge concerned is hereby set aside. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties stand discharged.

Appeal Allowed