

Tika Ram and ors. Vs. the State

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Court : Allahabad

Decided On : Apr-03-1957

Reported in : AIR1957All755; 1957CriLJ1200

Judge : Raghubar Dayal and ;James, JJ.

Acts : [Evidence Act, 1872](#) - Sections 5, 145, 155 and 157; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 162, 288 and 367

Appeal No. : Criminal Appeal No. 1876 of 1956 and Ref. No. 165 of 1956

Appellant : Tika Ram and ors.

Respondent : The State

Advocate for Def. : B.N. Katju, Adv. (Brief-holder)

Advocate for Pet/Ap. : B.S. Darbari, Adv.

Disposition : Appeal dismissed

Judgement :

James, J.

1. Tika Ram Jatav, his brother Lala Ram, their brother-in-law Patl Ram and friend Bhika Jatav were tried for offences under Ss. 148 and 302/148, I. P. C.. for committing a riot with deadly weapons on the night between the 3rd and 4th April

1956 and murdering Sobha Ram Jatav of village Nagla Mehdi, police circle Chaubia in the district of Etawah. They were found guilty of both the offences. Under Section 148, I. P. C., they were sentenced to three years' rigorous imprisonment each, while under 8. 302/149, I. P. C.. Tika Ram and Lala Ram were sentenced to death, and Pati Ram and Bhika to life imprisonment. They have come up in appeal to this Court, while we have also before us the Sessions Judge's reference for confirmation of the death sentences awarded to Tika Ram and Lala Ram.

2. It may be noted that the appellants belong to district Mainpuri and that their villages are eighteen or twenty miles from Nagla Mehdi, the village in which the crime was perpetrated.

3. The deceased .Sobha Ram was & young man about twenty years old and was of muscular build. He resided with his step-father Kalu in the village. On the fateful night he was violently assaulted with lathis, spears and sharp-edged weapons. He was first carried on a cot to village Basrehar, two furlongs away, where after arrangements had been made for an ekka he was sent off to the hospital at Etawah, seven or eight miles distant, in charge of one Nek Ram. His step-father Kalu proceeded to police station Chaubia. which is four miles from the village and lies in a direction opposite to that of Etawah, and on reaching there at 6 a.m. dictated the report Ex. P-I. in this he mentioned that the attack on Sobha Ram had been made by the four appellants and two unknown persons.

Since the victim was alive at the time, the re-port was recorded under Ss. 148 and 307, I. P. C., and the Sub-Inspector left for the scene at once for investigation. Meanwhile, Nek Ram escorted the wounded Sobha Ram in the ekka towards the Etawah hospital, but he succumbed to his injuries shortly before the city was reached. Leaving the dead body in charge of some persons Nek Ram went to the Kotwali at Eatwah and lodged the report Ex. P-14, which was taken down in the general diary at 8-30 a.m. In this report he mentioned that Kalu had already gone to Chaubia for lodging the first report of the crime, and also declared that the four appellants and a couple of unknown persons were responsible for the murderous attack on Sobha Ram.

4. Medical evidence proves that Sobha Ram had suffered one contused wound with a lathi and no less than twenty two stab or incised wounds, the stab wounds predominating. These had injured his lung, spleen and liver, and death was due to the shock and haemorrhage resulting from these injuries. Two important pieces of information . furnished by the medical officer who held the autopsy are that Sobha Ram could have survived for between one and five hours after sustaining the injuries, and that the chances of his speaking were fifty per cent.

5. In order to appreciate the evidence regarding the murder a note on topography is necessary. Kalu Jatav occupies a house in the village which has a roofed verandah outside and rooms inside. Opposite his house and to the east of it is a line of houses which include the houses of Nek Ram and Mulu Jatavs. Adjoining Kalu's house on the south is the house of Behari Jatav. In between these houses is a small open piece of land in the middle of which the local Panchayat has fixed a lamp post on which a lantern burns during the night. Just to the south of the open space aforesaid is a cucumber field of Mulu and Ram Sanahi, who are brothers.

6. The case against the appellants embraces both the motive for the crime and the mode of its execution. Kalu had a daughter named Shar-bati from his first wife. After losing his first wife he about fourteen years ago married Phul-mati who was the widow of one Zahar Jatav of Basrehar. Phulmati brought with her four children from Zahar, viz., Sobha (the murdered man). Chameli. Ramdei and Surja. Sobha was then about six years old. Kalu married Sharbati to the appellant Tika Ram, but she died about ten years back only a year after her gauna ceremony. The prosecution allege that thereafter the appellants Lala Ram Pati Ram and Bhika persuaded him to marry Chameli to Tika Ram.

The marriage was duly performed, but Tika ill-treated the girl, so much so that she had to leave him and seek refuge under the roof of her mother and step-father. About two and a half years ago with the consent of Tika's elders and in accordance with the custom of his community Kalu got her married to another man. This was resented by Tika and the other appellants, and several times they came over to Nagla Mehdi. calling Biradari Panchayats for getting Chameli back,

but the Panchayats invariably decided that if the girl having been married to another man with the consent of her former husband could not be returned. Annoyed over this turn of events the appellants uttered threats against Kalu's life on a number of occasions. One of these was in September 1955 when they met Nek Ram at a canal and told him that they intended to kill Kalu that night. Forewarned by Nek Ram, Kalu took the necessary precautions and therefore escaped injury.

7. On the murder of Sobha Ram the prosecution story is this. He was sleeping in the front verandah while his parents slept inside. The Panchayat lantern aforesaid was Burning. Some time after midnight the four appellants accompanied by two strangers arrived. Tika and Lala were armed with spears, Pati Ram and Bhika with kantas and the two strangers with lathis. They launched an attack on the sleeping Sobha, who immediately screamed out for help and ran towards, or was dragged towards, - the cucumber field to the south. He was surrounded and given a number of trusts and blows.

Next he ran into the verandah of Nek Ram and fell down there, his wounds leaving stains of blood both near the cucumber field and in Nek Ram's verandah. His cries brought to the scene his parents and a number of neighbours, who immediately recognised the four appellants in the light of the lantern. Seeing Kalu the appellants turned towards him, but he escaped violence by hiding, so that they resumed their attack on the already wounded Sobha Ram. But the arrival of the villagers obliged the assailants to bolt southwards.

Basrehar and Shankarpur are only about two Furlongs from Nagla Mehdi. The cries and screams had reached the ears of their residents also, who too came up to see what the matter was. By the time they arrived the culprits had of course disappeared from view. But Sobha Ram though seriously wounded was in his senses and was capable of speech. He told them that his assailants were the four appellants and two unidentified men. The taking of the wounded ' man to Etawah and the lodging of the two reports Exs. p. 1 and P. 14 has already been described.

8. On inspecting the scene of the occurrence the Sub-Inspector found marks of blood both near the cucumber field and under Nek Ram's verandah. This blood

was on scientific examination found to be human in origin.

9. Briefly therefore the case for the prosecution is that owing to enmity engendered by the second marriage of Smt. Chameli the four appellants accompanied by two unknown men murderously attacked Sobha Ram, Tika and Lala using spears and Pati Ram and Bhika using Kantas, as the result of which attack Sobha Ram died. Further, the eye-witnesses saw the actual attack and recognised the four appellants in the light of the burning Panchayat lantern, while Sobha Ram too had identified them and named them before witnesses in his dying declaration.

10. The appellants disclaim all responsibility for the death of Sobha Ram and contend that they have been falsely implicated through the malice of Kalu and his adherents. They declare that Tika had got rid of his wife Chameli because of her immoral character and had ceased to have any further interest in her. The suggestion distinctly made on their behalf is that Sobha Ram was actually attacked and killed by Kalu and Nek Ram because the former wanted to make sure of appropriating his property. No evidence has been adduced in defence.

11. For establishing the charge the prosecution rely on the evidence of six alleged eye-witnesses, viz., Kalu, his wife Phulmati, and his four close neighbours Nek Bam, Mulu, Behari and Ram Sanahi. In addition they have examined Duju Kachhi to prove the dying declaration of Sobha Ram, while similar testimony has been given by two Court witnesses, Mewa Ram Brahman and Fearey Kachhi.

12. Kalu and Phulmati were sleeping inside the house when they were awakened by the cries of Sobha Ram. Both have described what they saw on coming out of the house. They claim to have clearly seen the four appellants committing the assault assisted by two men who could not be identified. Kalu has further described the factors which furnished the motive for the crime. He mentions the threats given to him on several occasions by the four appellants, and in particular testifies to the incident of the previous September in which they had told Nek Ram that they were planning to kill him. Kalu and his wife are fully corroborated by the first information report Ex. P. 1.

13. Certain circumstances require to be borne in mind in assessing the testimony of Kalu, Phulmati and the other eye-witnesses. First of all, they were the most natural witnesses of the assault, present as they were in the close vicinity of the verandah where the deceased man was sleeping. Next there was the element of time. This is not one of those cases where the murderer creeps up to his sleeping victim, fires a shot at him or gives him a chopper blow and has disappeared from view before witnesses can reach the scene: on the contrary, the large number of injuries inflicted on Sobha Ram and the several sites where this was done made it inevitable for the attack to take an appreciable length of time, more so when being young and muscular he could not prove an easy victim; the youth would be screaming at the top of his voice and thereby awaken persons sleeping in the neighbourhood; hence these persons would patently be in time to see the attack and the attackers.

Then there was the light shed by the Fan-chayat lamp mentioned above. The existence of the lamp cannot be disputed, but it has been alleged on behalf of the defence that it was not burning at the time of the incident. Nevertheless the evidence of impartial witnesses, as will be noticed presently establishes that it was burning. In its light it was a perfectly easy matter for the witnesses to recognise the faces of the assailants, and since it is admitted that owing to their frequent visits to Nagla Mehdi the four appellants were well-known to the inhabitants of that village the latter would unmistakably identify them. Incidentally, Sobha Ram too- must have had adequate opportunity of seeing and recognising his assailants.

14. Bearing the above discussed circumstances in mind, Kalu and Phulmati are immediately seen to be witnesses on whom we can safely rely, and in this connection we are reminded of the observations of the Supreme Court in *Dalip Singh v. State of Punjab* : [1954]1SCR145 that relatives of the deceased man would be the last to screen the real culprits and to falsely implicate innocent persons. Besides, Kalu and his wife would scarcely incriminate persons of distant villages in another district unless they were positive with regard to their identity. As already pointed out, husband and wife are fully corroborated by the first report Ex. P. 1.

15. Turning now to the other four alleged eye-witnesses. Nek Ram, Mulu, Behari and Ram Sanahi, we find all of them unequivocally named in the first information report Ex. P. 1 as such. The first three of them were sleeping in their respective houses while Ram Sanahi was sleeping in the cucumber field aforesaid; they were awakened by the outcry and ran into the open space to see what was happening. In the Sessions Court all four made out that on reaching the open space they found Sobha Ram lying wounded while the attackers were nowhere on the scene. Nek Ram further declared that Sobha Ram told him the names of the four appellants as his assailants, but Mulu and Ram Sanahi averred that he was unconscious, while Behari said that although somewhat in his senses he did not name anyone. With regard to the Panchayat lamp too they asserted that although burning in the evening it had got extinguished by the time the attack was launched.

16. These statements in the Sessions Court were in direct contradiction to the depositions of these witnesses before the committing Court, and accordingly the trial Judge very rightly admitted those statements in evidence under Section 288 Cr. P. C. & gave the witnesses every opportunity of explaining them. We have examined with care the depositions of these four witnesses made in the committing Court. We find that they were in full conformity with the prosecution case; not only did they show unequivocally that the witnesses had recognised four of the assailants as the present appellants, Tika and Lala using spears and Bhika and Pati Ram Kants, but that the lantern was burning. Moreover, Nek Ram had mentioned the threats uttered by the appellants in the previous September.

That the statements admitted under Section 288 Cr. P. C. are substantive evidence in the case is a proposition which cannot be disputed, and accordingly the Court is fully entitled to rely upon them. There is one particular reason why in the instant case we believe the statements made in the Magistrate's Court to be true ones. This is that the report Ex. P. 14 which Nek Ram had made at the Etawah Kotwali was in complete accord with his deposition before the committing Magistrate.

17. Here we permit ourselves a digression on a question of law; is the report Ex. P. 14 admissible? It is arguable that since this report was made to the police

subsequent to the report Ex.-P. 1 on which the Sub-Inspector of Chaubia had already started his investigation, it comes within the mischief of Section 162, Cr. P. C. and consequently cannot be used for purposes of corroborating its maker Nek Ram. The question of admissibility is of some importance as the Courts are frequently confronted with more than one report made to the police and are called upon to decide which of the various reports is to be deemed to be under Section 154, Cr. P. C. (and therefore admissible in evidence) and which is hit by Section 162 Cr. P. C. (and therefore unusable for purposes of corroboration).

The crucial phrase in Section 162(1) Cr. P. C. is 'in the course of an investigation', an investigation being defined in Section 4(1) as including all proceedings under the Code for the collection of evidence conducted by a police officer. The phrase was considered by a Bench of this Court in *Emperor v. Aftab Mohd. Khan* : AIR1940 All291 . Two different views were pressed before their Lordships; first, that the phrase should be treated solely as marking a span of time, that is to say, it defined the period of time between the moment the investigation started and the moment it ended and no statement made during that interval, whatever the circumstances in which it was made, could ever be used; second, that the phrase imported the meaning that the statement has to be made, not only after the investigation has started, but as step in, or in conscious prosecution of, the investigation itself.

Their Lordships had no hesitation in rejecting the first view and accepting the second. They observed:

'We take the view that the words 'in the course of' in the context of this section import that the statements must be made as a step in a pending investigation to be used in that investigation. We do not think that the words 'in the course of' refer merely to that period of time which elapses between the beginning and the end of the investigation,'

They further held that if there was a report which was found to have been made quite independently of, and in no relation to, any pending investigation, was not designed to promote a pending investigation, and had no reference at all to the investigation which had in fact already begun, it was a document admissible for

the purpose of corroborating the evidence of its maker.

18. The view of the High. Court at Patna is the same. In *Emperor v. Lalji Rai* AIR 1936 Pat 11 (C) a Division Bench of that Court held that where a report about the commission of an offence is given to the police at two different dates by two different persons, and one is earlier in point of time than the other, the latter report is not a statement made to a police officer in the course of an investigation but is an independent first information report, and therefore can be used in evidence by the prosecution. In the subsequent case of *Suba Chaudhury v. The King* : AIR1950 Pat44 the ruling in *Emperor v. Aftab Mohd. Khan (B)* (Supra) was specifically followed. There is an earlier decision of the Calcutta High Court in *Mani Mohan Ghose v. Emperor* : AIR1931 Cal745 which by implication may be thought to lay down a different rule. With great respect we are unable to agree with it. On the interpretation of Section 162, Cr. P. C. we respectfully endorse the view expressed in the Allahabad and Patna decisions just referred to.

19. Reverting now to Nek Ram's report Ex. P. 14 we find that it was made quite independent-ly of, and in no relation to, the investigation which had started earlier on Kalu's report Ex. P. 1; it was neither designed to promote the pending investigation nor did it have any reference at all to it. Indeed, neither Nek Ram nor the Kotwali police had the remotest idea of the contents of Kalu's report at Chaubia nor were aware that the Chaubia police had already commenced an investigation. We have therefore no hesitation in upholding the admissiblility of the report Ex. p. 14. It is of course not substantive evidence of the facts stated therein, but it is evidence to corroborate Nek Ram under Section 157 of the Evidence Act, or to contradict him under Ss. 155 and 145.

20. As already pointed out, the report Ex. P-14 was in complete accord with Nek Ram's deposition before the Committing Magistrate. He and his fellow-witnesses Mulu, Behari and Ram Sanehi explained in the trial Court that their depositions before the Committing Magistrate were due to beatings by the police. We are not prepared to accept this explanation for & moment; had there been any truth in it it would hftve been put forward before the Magistrate and the injuries shown to him. We are strongly inclined to the view that subsequent to making truthful statements

before the Committing Court Nek Ram, Mulu. Behari and Ram Sanahi were won over and consequently before the Sessions Court made statements exculpating the appellants.

We should like to emphasise that, in view of the time factor, on emerging from the places where they had been sleeping they were bound to have seen the assailants in the process of attack. Nor do we find much difficulty in understanding how the witnesses were persuaded to resile from their previous statements. The fact is that previously there were strained relations between Kalu and Nek Ram, a fact which even finds place in the first report Ex. P. 1. We have little doubt that in- view of the dastardly and brutal of the crime the witnesses initially volunteered true statements, but by the time the case went to the sessions Court the pull of old enmity prevailed over the counter-pull of the truth.

We note in passing that the learned trial Judge has issued notices to these four witnesses to show cause why they should not be prosecuted for perjury, a step which we whole-heartedly endorse for discouragement of false evidence before the law Courts.

21. The prosecution witness Duju Kachhi belongs to Basrehar only two furlongs distant from Nagla Mehdi. He along with others went to that village on hearing the hue and cry. By the time he reached the scene the attackers had of course disappeared from view, but he declares that he found Sobha in his senses and on being questioned stated that the four appellants were among his six assailants. Duju adds the important information that on arrival he found the Fanchayat lantern burning. He is by caste a Kachhi and therefore, unconnected with the parties, who are Jatavs. He has neither any friendship with Kalu nor any hostility against the appellants. He therefore bears the stamp of truth. It should be borne in mind that in view of the time factor and the lighted lantern the victim Sobha Ram had every opportunity of seeing the faces of his attackers. We note with interest that despite being won over Nek Ram has adhered to his assertion that Sobha named the four appellants as the culprits.

22. The two Court witnesses Mewa Ram and Pearey have given evidence exactly similar to that of Duju. Mewa Ram is a Brahman from Basrehar and Pearey a

Kachhi from Shankarpur, which too is a couple of furlongs' from Nagk Mehdi. Neither of these has any motive for testifying falsely against the appellants. There is an additional reason why we hold them disinterested and impartial. On the 13th November 1956 during the sessions trial a witness mentioned these two men as having been present when Sobha Ram made his dying declaration; the learned trial Judge at once ordered the issue of summonses to them they appeared before him next day. the 14th November, and were examined. It is manifest that their examination took place without notice and before there, was any time for Interested persons to approach them. Accordingly we attach a high degree of importance to their testimony.

23. We thus find the prosecution case supported by the consistent testimony of Kalu and Smt. Phulmati by the depositions of Nek Ram, Mulu, Behari and Ram Sanahi before the Committing Court, and by the statements of Duju, Mewa and Pearey.

24. Some questions of a general nature call for consideration now. It has been pointed out on behalf of the appellants that although the murderous attack took place shortly after mid-eight Kalu's first report Ex. P. 1 was not made until 6 a. m. though Chaubia is only four miles away, and accordingly it is argued that in the interval consultation must have been resorted to. We consider that the argument ignores basic facts. First of all, Sobha Ram's wounds had to be bandaged (as stated by the truthful witness Duju). Next, he had to be carried bodily to Basrehar. At Basre had an ekka had to be arranged for conveying him to Etawah seven miles away. The large number of wounds must have made the process of bandaging a long one.

The serious condition of the wounded man necessitated his being carried from one place to another very slowly and carefully. At that time of the night ekkas are never found ready for a journey; waking up an ekka driver, persuading him to go, the harnessing of the horse etc. must inevitably consume time, it was obviously not possible for Kaiu to leave Basrehar for Chaubia before everything was ready for taking Sobha Bam to Etawah. Consequently we are not at all surprised at his inability to reach the police station before 6 a. m. The same reasoning, we might

add, would apply in order to explain Nek Ram's report Ex. P. 14 made at the Etawah Kot-Wali at 8-30 a. m. we are satisfied that there was no undue delay in the lodging of either report,

25. It has also been argued on behalf of the appellants that the serious injuries of Sobha Ram would either have killed him instantaneously or made him unconscious, so that in either case it could not have been possible for him to make a dying deposition, and indeed in the course of his arguments the appellants' learned counsel made a written application requesting that the doctor who had conducted the post-mortem examination be summoned to the Court to clarify these points.

We however find that the doctor was questioned on all relevant points before the trial Court and that he explained the points adequately; accordingly we turned down the application for re-summoning him. The fact is that the learned doctor made it clear that Sobha Ram could have survived for between one and five hours and that the chances of his being capable of speech were fifty per cent. We have already referred to the oral evidence proving that he did make a statement before the witnesses. In this connection we would like to lay special stress on the statement Of Nek Ram, a person who has made a deliberate attempt to help the defence. Even after he had been won over he adhered to his previous statement 'that Sobha Ram mentioned the names of the four appellants as 'his assailants.

Coming as this assertion is from the lips of a witness like Nek Ram we have no cause to view with suspicion the prosecution evidence on the point. It has further been pointed out on behalf Of the appellants that Kalu's first report Ex. P. 1 made no mention of Sobha's dying declaration. It is significant however that in cross-examination not a single question was put to him with regard to this omission, a fact from which we are entitled to Infer that the defence were not laying much store by the matter. It is possible that the assertion in Ex. p. i that Sobha was crying out the names of the appellants was considered sufficient to cover his dying declaration also Besides, a first information report cannot be expected to contain every detail of the incident it purports to describe.

26. Again, there is the question of why the four appellants should have joined in committing the crime, The reason is to be found in their community of interest in the affair of Sm. Cha-meli. Tika Ram could not brook the idea of his discarded wife being respectably re-married according to the customs of his community, Lala Ram is his own brother and Pati Ram his relative, while Bhika is his neighbour and friend, These three men, according to the evidence, were the intermediaries through whose efforts Kalu had been persuaded to marry Chameli to Tika Ram. Their resentment at the woman's remarriage was therefore the same as that of Tika Ram. Their threats to murder Kalu are confirmed by the first report Ex. P. 1 and Neb Ram's own statement in the committing Court.

27. Finally, there is the defence plea that the murder was the deed of Kalu and Nek Ram. Before us the appellants' learned counsel has very rightly declined to press it. But since it was taken before the trial Court we should like to make it clear that we consider it perfectly absurd. Sobha Ram had been happily living with his stepfather Kalu ever since the re-marriage of his a mother Phulmati. So were living his sisters. There is nothing on the record to suggest that there was any ill-felling between Kalu and his step-children; on the contrary all the indications are that their relations were throughout harmonious.

Sobha Ram had no doubt inherited about five bighas of land from his father Zahar, but his death could not profit Kalu in the slightest, for the property would go to Sobha's blood relations. Kalu could not manifestly hope for any profit for himself by Sobha's death. Absurd as the allegation of his being the murderer was, it was made doubly absurd by coupling him with Nek Ram, a man who in the Sessions Court did a good deal to shield the appellants. On the other hand, although we have no doubt that the primary object of the appellants was to murder Kalu, they decided to take revenge on Sobha Ram both because according to the evidence, he was a willing party to his sister Chameli's second marriage, and because he was the first member of the family whom the murderers on reaching Kalu's house found a sitting target.

28. In view of the discussion attempted-above we uphold the findings of the learned trial Judge that the four appellants along with two unknown persons

committed a riot with deadly weapons and murdered Sobha Ram. They have therefore been rightly convicted under Sections. 148 and 302/149 I. P. C. The evidence establishes unequivocally that' the murderous attack was a pre-planned one and was executed with great brutality. The death sentence passed on Tika Ram and Lala Ram is richly deserved, and we should like to add that Pati Ram and Bhika are lucky to have escaped with the lesser sentence, for the weapons they had used against the deceased were as deadly as those by the other two men.

The appeal is dismissed, the reference under Section 374, Cr. P. C. made in respect of Tika Ram and Lala Ram accepted and the death sentences passed on these two men confirmed. The sentences shall be carried out according to law. Pati Ram and Bhika shall each suffer imprisonment of life formurder. The conviction and sentences of all the appellants under Section 148 I. P. C. are also affirmed.

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