

**Het Ram and ors. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/472287](http://sooperkanoon.com/472287)

**Court :** Allahabad

**Decided On :** Jan-15-1974

**Reported in :** 1974CriLJ871

**Judge :** J.M.L. Sinha and B.N. Katju, JJ.

**Appellant :** Het Ram and ors.

**Respondent :** State

**Advocate for Pet/Ap. :** Sri. Kundan Singh

**Judgement :**

**B.N. Katju, J.**

1. Het Ram Sobaran and Ram Lal have filed this appeal against the judgment of Sessions Judge Farrukhabad dated 4-8-1972 passed in Sessions Trial No. 114 of 1972 convicting them under Sections 302/34 and 307/34 IPC and sentencing them to imprisonment for life and ten years R. I. respectively, .

2. The case of the prosecution is that on 24-12-1971 at about 3 a. m. Rati Ram deceased along with his son Rajaram (PW 2) and nephew Dwarika (PW 2) left their village Uliapur in order to sell potatoes which were loaded in their bullock carts. At about 3, 30 a. m. when they had covered a distance at about 3/4th of a mile and were between villages Jhausia and Rampura they were surrounded toy

the three appellants. All the three appellants were armed with Karaulis and Sobaran was also armed with a lathi and Het Ram was also armed with a pistol. Sobaran gave a lathi blow to Raja Ram and thereafter all the three appellants began to assault Rati Ram deceased and Raia Ram with Karaulis. Rati Ram and Raja Ram raised an alarm tout before the arrival of witnesses from village Jhaua the appellants left the scene of occurrence.

3. The first information report was lodged by Lala Ram (PW 1) at police station Shamshabad at 9.50 a. m. on the same day (24-12-1971).

4. The injuries of Raja Ram and Rati Ram were examined by Dr. Sabir Husain in the District Hospital. Fetehtarh on 24-12-1971 at 8 p. m. and 8.40 p. m. respectively and the undermentioned injuries were found on their persons:

#### Raja Ram

1. Incised wound  $A' \times 1'$  x skin on left side of forehead 2' above the left eye- brow.
2. Incised wound  $1/4' \times 1/10'$  x skin on left arm outer surface, upper 1/3rd.
3. Incised wound  $1' \times 1/4'$  x skin 3 -1/2' below injury No. 2.
4. Incised wounds 3 in number -- size  $1' \times A \ 1/2'$  x skin  $1' \times 1/4'$  x skin and  $1/2' \times 1/4'$  x skin, irregularly placed in an area  $2' \times 1'$  outer aspect middle of left arm.
5. Incised wound  $1/4' \times 1/4'$  x skin, on outer aspect of left elbow.
6. Incised wound  $1/4' \times 1/4'$  skin on left side back, below inferior angle of left scapula.
7. Incised wound  $1/4' \times 1/4'$  x cavity deep. air escaping. 4' below and front of injury No. 6.
8. Incised wound  $1/2' \times 1/2'$  x muscle deep 3' below injury No. 7.
9. Incised wound  $1/2' \times 1/2'$  x muscle, left side of back, 24' behind the left spine of Chip.

10. Incised wound 1 1/2' x 1/2' x muscle, 2' above and behind injury No. 9. on left side of back.
11. Incised wound 2' x 1' x muscle, 1' to right far from injury No. 10.
12. Incised wounds. 3 in number size 1' x 1/2' x muscle each, in an area 2' x 1 1/2' just below injury No. 11.
13. Incised wound 1/2' x 1/4' x skin over spine V lumber vertebra.
14. Incised wound 1' x 1/2' x muscle, middle of left buttock.
15. Incised wound A, ' x 1/4' x skin, on, left thigh outer aspect, upper 1/3rd.
16. Incised wound 3' x 1 1/2' x muscle, 2 1/2' below injury No. 15.
17. Incised wound 1' x 1/2' muscle. 2 1/2' below injury No. 16.
18. Incised wound 3' x 1/4' x muscle on right leg outer aspect middle.
19. Incised wound 1' x 1/4' x muscle, on right arm 2' above the left elbow.
20. Incised wound, 1' x 1/4' x muscle on top of right Shoulder.

#### Rati Ram

1. Incised wound 1 1/2' x 1/4' x skin, on back of left forearm. 1' above the wrist.
2. Incised wound 1' x 1/8' x skin, on ulnar aspect of left forearm, 3' to ulnar side from injury No. 1.
3. Incised wound 1/4' x 1/4' x skin. 1/2' behind the left outer superior iliac spine.
4. Incised wound 1 1/2' x 1/2' x muscle, on left side back 1' away and to left from midline at the level of II, III spine of lumber vertebra-kidney region.
5. Incised wound 2 1/4' x 1/2' x chest cavity deep on left side chest between XI and XII ribs AIR from kings was escaping.

6. Incised wound 1' x 1/4' x cavity deep-on left side of chest 1 1/2' above and in front of injury No. 5.
7. Incised wound 1 1/2.' x 1/2' x cavity deep, on left costal margin, middle AIR escaping.
5. The dying declaration of Rati Ram deceased was recorded by Sri P.S. Bisht, S.D.M. Kaimganj on 24-12-1971 at 10.10 p. m.
6. Rati Ram deceased died on 30-12-1971 in the hospital as a result of the injuries received by him.
7. The post-mortem examination was conducted by Dr. G.D. Ahuja. According to Dr. Ahuja. the cause of death was collapse of left lung due to injuries to chest cavity.
8. The prosecution examined two eye witnesses, namely Raja Ram (PW 2) and Dwarika (PW 3).
9. The appellants pleaded not guilty and stated that they had been implicated falsely due to enmity.
10. The trial court after considering the evidence on record came to the conclusion that the prosecution had succeeded in establishing the guilt of the appellants with respect to the murder of Rati Ram deceased and the injuries to--Raja Ram (PW 2) and convicted and sentenced them as mentioned earlier. The appellants were however acquitted by the trial court with respect to the murder of Nain Sukh. the uncle of Raja Ram (PW 2) which, according to the prosecution, was committed by the appellants in village Uliapur after they had assaulted Rati Ram and Raja Ram.
11. Raja Ram is an injured witness. His presence is established by the injuries received by him. We are of the opinion that Dwarika was also present at the time of the incident. The question that however remains to be considered is whether both these witnesses could identify the assailants in the dark night. As we were not certain whether persons could be identified in a dark night even from a short distance we went to a place where there was no artificial light on 11-1-74 which

was the third day of dark fort-night at about 7.30 p. m. before moonrise along with the learned Government Advocate and Sri Kundan Singh counsel for the appellants. We found that it was extremely difficult to recognise faces even of persons standing within a foot. Although the general outline of the face was visible the features could not be seen clearly. Beyond a distance of two or three feet even the outline of the face was not clear. It is noteworthy that according to the evidence on record the assailants did not speak at all at the time of the occurrence. There was therefore no question of recognition by vice. We are therefore of the opinion that even Raja Ram and Rati Ram who had received injuries in the incident were not in a position to recognise the assailants clearly beyond the possibility of any mistake. According to the evidence on record, Dwarika is alleged to have recognised the assailants from a distance of about five or six paces. From that distance it was not at all possible to do so. The result therefore is that we are not prepared to accept either the dying declaration of Rati Ram or the statements of Raja Ram and Dwarika regarding the complicity of the appellants in the crime. The implication of the appellants on the basis of suspicion cannot be ruled out as admittedly there was a dispute between Rati Ram and Het Ram in respect of a field which, according to the prosecution, constituted the motive for the crime. It may be mentioned that Sobaran and Ram Lal appellants are the nephews of Het Ram appellant. The evidence of Dalel Singh (PW 9) is of no value as according to his statement, he was informed the names of the assailants by Dwarika. Rati Ram and Raja Ram whose evidence regarding the identity of the assailants we are not prepared to accept.

12. The result, therefore is that the prosecution has failed to establish the guilt of the appellants beyond reasonable doubt.

13. We accordingly allow the appeal and set aside the conviction and the sentences of the appellants. They are in jails. They shall be released forthwith unless wanted in connection with some other case.