

State of U.P. Vs. Ram Chandra and ors.

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Court : Allahabad

Decided On : Jul-11-1991

Reported in : 1992CriLJ418

Judge : H.C. Mital and ;B.P. Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34

Appeal No. : Govt. Criminal Appeal No. 3247 of 1978

Appellant : State of U.P.

Respondent : Ram Chandra and ors.

Advocate for Def. : Rajiv Ratan and ;B.D. Ojha, Adv.

Advocate for Pet/Ap. : A.G.A. and ;H.M. Srivastava, Adv.

Disposition : Appeal dismissed

Judgement :

H.C. Mital, J.

1. State has preferred this appeal against the order of acquittal, dated 8-8-78, passed by Sri G. D. Chaturvedi, the then Additional Sessions Judge, Jaunpur, acquitting the abovenamed respondents Under Sections 302 and 307 both read with Section 34, IPC.

2. The facts leading to the prosecution of the respondents in the present case were that an incident had taken place on 20-7-71 at about 6.00 p.m. in front of Bhola Temple in village Dhania Mau, police station Baksha, district Jaunpur where a Mela was being held and at that time Deoraj and Deo Narain after getting down from the Bus proceeded for Darshan towards the Bhola Temple where at that time Bansraj, the complainant, Raghunath and Raj Narain, the two deceased, were present near the temple. After a few minutes Ram Chandra Moti Lal and Jagat Niwas also reached there Ram Chandra and Moti Lal were armed with knives and Jagat Niwas with a Karauli and at the instigation of Moti Lal, Jagat Niwas gave a Karauli blow to Deo Narain and Ram Chandra gave knife blows to Deo Raj. When Raghunath and Raj Narain intervened, Ram Chandra gave knife blows to Raj Narain and Moti Lal to Raghunath. Both Raghunath and Raj Narain fell down dead at the spot. Immediately thereafter a truck arrived at the place of occurrence wherein Bansraj carried the injured and the deceased to police station Baksha and submitted there a written report Ext. Ka 1 at 6-45 p.m., on the basis of which a case was registered. The two injured were sent to Hospital at Jaunpur Deo Raj and Deo Narain were medically examined. After investigation, the respondents were charge sheeted and tried.

3. At the trial the prosecution examined in all 17 witnesses of whom P.W. 4 Bansraj complainant P.W. 2 Deo Narain, P.W. 3 Deo Raj, the two injured, and P.W. 5 Shobhnath are the eye witnesses of the occurrence P.W. 1 Dr. G. C. Sharma had examined the injured Deo Narain and Deo Raj at the District Hospital, Jaunpur on 20-7-71 at 8-15 and 8-30 p.m. and noted the following injuries on their persons:--

Injuries of Deo Raj vide Ext. Ka 6

1 -- Incised wound 5-5 cm x 2.5 cm x muscle deep on the back of the chest right side over intra-scapular area. Margins were clean cut. Wound was bleeding profusely. Emphysema was not present.

Injuries of Deo Narain Vide Injury Report Ext. Ka-7

1 -- Incised wound 2.5 cm x 1 cm x muscle deep on the outer side of Rt. deltoid muscle of right hand.

2 -- Incised wound 2 cm x 0.5 cm x muscle deep on the back of the chest right side over intra scapular area.

3 -- Abrasion 1 cm x 0.5 cm on the middle of right palm 7 cms below the base of right middle finger.

In the opinion of Doctor Sharma all the injuries were fresh. They could be caused at about 6 p.m. and were caused by some sharp edged weapon like knife. They were, however, simple. P.W. 15 Dr. B. D. Sharma had done the autopsy on the dead bodies of Ram Narain and Raghunath on 21-7-1977 at 3.00 and 4.30 p.m. and noted the following Ante Mortem injuries:--

Ante-mortem injury of Ram Narain vide post mortem report Ext. Ka 4

1 -- Punctured wound 3' x 1' chest cavity deep (5') with clean cut margins on the left pectoral region of chest below the outer end of clavicle going obliquely downward and medially into the chest cavity.

On internal examination there were punctured wounds in between 2nd and 3rd ribs. Pericardium was punctured and left auricle of heart was also punctured. Stomach contained semi digested Food. Small intestines were empty and large intestines were full of faecal matter.

Injuries of Raghunath vide postmortem examination report Ext. Ka 5

Anti Mortem Injuries.1 -- Punctured wound 1 1/2' x 1' x chest cavity deep with clean cut margins on the right side of the back of chest, 5' lateral to mid line at the level of 5th thorax vertebra. Direction downwards and laterally.

On internal examination 6th and 7th ribs of right side were quite cut. Pleura was also cut and right lung was punctured 1' x 1/2' x 1/2' in the lower lobe. Stomach contained semi digested food. Small and large intestines were full of faecal matter.

4. In the opinion of the Doctor Sharma both the deceased had died due to ante mortem injuries found on their person as a result of shock and haemorrhage and the injuries were sufficient in the ordinary course to cause death and the death could have taken place on 20-7-71 at about 6 p.m.

5. P.W. 1 Lalchand Yadav was the Head Mohharrir at Police Station Baksha and he recorded the first information report and had also earlier recorded the first information report regarding an occurrence in the noon about which P.W. 6 Satya Deo gave evidence as an eye witness. P.W. 17 Sub Inspector Ram Chandra is the Investigating Officer and has deposed about the various steps taken by him during the course of investigation. The remaining are formal witnesses.

6. The version of the accused was of total denial having been implicated due to enmity and they also examined six witnesses, namely D.W. 1 Jagdish Shukla (brother of Jagat Niwas), D.W. 2 Head Constable Shyam Sunder Sharma of Madhya Pradesh and D.W. 3 Dr. Rajendra Prasad to prove that Jagat Niwas treated as out door patient on 21 -7-71 at District Hospital Shajehpur (M.P.) D.W. 4 Kailash Mohan Upadhaya, D.W. 5 Dr. I.P. Tiwari to prove that Jagat Niwas remained as indoor patient from 21-7-71 to 23-7-71 at Primary Health Centre as patient of gastroentritics and D.W. 6 Suresh Chandra Sharma, a friend of Jagat Niwas to prove that on 21-1-71 he was at Shajehpur (M.P.) and has fallen sick.

7. That apart, the defence also filed about 26 documents in support of their defence.

8. The learned Sessions Judge without considering the defence evidence held that the prosecution evidence itself did not bring home guilt to the accused beyond reasonable doubt, hence he acquitted the accused and on being aggrieved the State has preferred this appeal.

9. The law is well settled that appeals from acquittal are allowed only in exceptional circumstances. It is an extraordinary remedy. The appeal by Government should be made judiciously and only in cases where the judgment is so clearly wrong that its maintenance would amount to a serious miscarriage of justice or when a principle is involved or the question is one of great importance or

of great public importance. The Burden is on the Government to show that the acquittal is wrong and strong and urgent grounds must be made out to justify interference. When there is reasonable doubt as to the guilt of the accused, the High Court will not interfere nor will it interfere merely because upon evidence the lower court might have come to the conclusion of guilty, unless it is quite clear that the acquittal is wrong. The High Court will not also interfere merely because it might itself, as original court, have arrived at a different conclusion. Where an appeal against acquittal turns on the facts it would only succeed if the judgment or acquittal is clearly wrong and involves a miscarriage of justice or when the trial Judge has erred in failing to draw the clear, indubitable and irresistible inference from the facts or when the trial court's appreciation of evidence is vitiated by failure to take note of a very important fact or where finding of fact is based on an erroneous rejection of evidence. Hence this Court will only interfere if it is proved without any doubt not only that the accused is guilty, but that the accused have been acquitted on unreasonable grounds.

10. To appreciate the evidence on record it is necessary to make a reference to the relationship and enmity between the parties, which is not disputed. The following pedigree gives the relationship :--

MatabadalBhagwan Dutta ChigguRam Charitra Shitla PrasadDeo NarainRaj Deoraj Bansraj (P.W. 2)Narain (P.W. 3) (P.W. 4)ComplainantMoti LalAccused-respondent)

11. Bansraj and Deoraj lived together while Raj Narain, father of accused. Moti Lal had separated and was living separately. Deoraj and Deo Narain were living in Bombay and Bansraj was living in the village and was looking after the cultivation. Deoraj has no issue. Respondent Ram Chandra and Jagat Niwas are also residents of village Dhanias Mau and Jagat Niwas is the nephew of Ram Chandra. The three respondents belonged to one Party. The complainant and his brothers had ancestral properties. Deo Narain had half share in those properties while Raj Narain, Deoraj and Bansraj had the other half. Deo Narain has been living in Bombay for the last several years where he was working in a motor company. Deoraj was also working in a Shipping Company there. Bansraj, the complainant,

had also lived at Bombay for some years but had returned and was looking after the cultivation in the village. After the death of their father Ram Charitra, Raj Narain and Moti Lal looked after the cultivation. Deo Narain had built a separate house and Ram Narain father of Moti Lal also purchased land in the name of his wife. There has been a dispute between Moti Lal appellant on one hand and Bansraj, Deo Raj and Raj Narain on the other about the share in the ancestral property and Moti Lal also demanded share in the house constructed by Deo Narain. As the latter had not obliged, Moti Lal had a strong motive against them. In the month of June, 1971 Deo Narain had come from Bombay to attend the ceremonies after the death of his mother and had stayed the village for two months. It is said that on 16-6-71 in the noon when Deo Raj was fixing a pole at his door Moti Lal armed with a Gandasa assaulted Deo Raj and Deo Narain as a result of which Deo Raj had received Gandasa injuries and he made a complaint about it to the Superintendent of Police, Jaunpur. Since then Moti Lal had left his house and was not seen. However, admittedly about the same occurrence Moti Lal had also filed a complaint in the court against Deo Raj, Deo Narain and Bansraj which was dismissed by the Magistrate but Moti Lal had filed a revision and the same was pending even when evidence in the present case recorded by the Sessions Judge. It is also alleged that on the date of occurrence dated 20-7-71 in the noon at about 12 when Deo Narain was going on his cycle from the village at a distance of 3 miles on Jaunpur-Badlapur road Moti Lal was found sitting in front of saw Mill and seeing Deo Narain, Moti Lal stopped his cycle and assaulted him with his Karauli. However, Deo Narain leaving his cycle ran for safety. Even then Moti Lal chased him for a few paces but when students from a nearby school intervened, Moti Lal had left Deo Narain thereafter picked up his cycle, returned to his house and along with Deo Raj came to Dhaniya Mau Market in search of Bansraj but could not meet him and then got the FIR Ext. Ka 2 scribed from Raj Narain deceased and submitted the same at police station Baksha at about 4-30 p.m. on the basis of which an entry in the G.D. was made by P.W. 11 Head Moharrir Lal Chand Yadav. The incident of the case at hand took place the same day in the evening after Deo Raj and Deo Narain again returned to Dhaniya Mau by Bus from police station Baksha and arrived at Bhola Temple at about 6.00 p.m. where a fair (Mela) was being held.

12. On behalf of the State it was urged that the acquittal of the respondents was prima facie perverse as there was evidence of two injured, namely Deo Narain P.W. 2 and Deo Raj P.W. 3 whose presence at the scene of occurrence could not be doubted and they would not have excluded the real assailants. The learned Sessions Judge has in his judgment, however, come to the conclusion that the occurrence appeared to have taken place at 7.00 p.m. or thereafter when there was poor visibility and, therefore, in the large crowd of the Mela these two injured also could not correctly recognised the assailants. On behalf of the State it was urged that the occurrence had taken place at 6.00 p.m. and the F.I.R. was lodged at 6-45 p.m. at police station Baksha, therefore, in the month of July at that time there must be sufficient visibility and there could be no question of any mistake in the recognition of the assailants. The learned Sessions Judge has found that the time of the report as 6-45 p.m. was doubtful. Hence we have to see whether the finding of the learned Sessions Judge that the FIR was not lodged at 6-45 p.m. but subsequently and the occurrence might have taken place about 7-00 p.m. or thereafter could be reasonably arrived at from the evidence and circumstances on record. No doubt the time of report mentioned in the FIR is 6-45 p.m. The injured are also said to have been medically examined at 8-15 and 8-30 p.m. at the District Hospital, Jaunpur. The report of the occurrence was lodged by Bansraj P.W. 4 and he has specifically stated on oath that he had remained at the police station while Deo Raj and Deo Narain were sent to Sadar Hospital on the truck. He remained at the police station till the arrival of the Station Officer, who was not then present. According to Bansraj the Station Officer arrived after about 45 minutes, However, P.W. 17 Station Officer Ram Chandra Singh has deposed that he received information about the murder when he was at Badanpur Padao in Jaunpur and thereafter he left for the Police Station Baksha and reached there at 9-30 p.m. in that view of his testimony. If the statement of Bansraj is believed that he had waited for 45 minutes when the Station Officer arrived at the police station indicates that the report might have been lodged at about 8.00 p.m. and not at 6.45 p.m. That apart, the statement of Bansraj P.W. 4 that he had written the report at the scene of occurrence itself is not free from suspicion as found by the learned Sessions Judge in view of the contents of the FIR itself 'Meh aapne ghayal bhaiyon Deoraj and Deo Narain va Mirtak Raj Narain Yadav va Raghunath Yadav

kee lahash lekar aaya hoon.' Moreover, P.W. 2 Deo Narain himself has admitted in his cross examination that in his statement earlier before the learned Sessions Judge he had stated that the report was taken down at the police station at his dictation. That also belies the statement of Bansraj that he had scribed the F.I.R. at the scene of occurrence itself.

13. Moreover, the report which was taken down at the police station at the dictation of Deo Narain P.W. 2 as stated by him has not been brought forth by the prosecution but the same has been concealed and a fresh report on behalf of Bansraj is on record. Hence the Investigation also cannot be said to be free from suspicion and there does appear force in the contention of the defence that this FIR on behalf of Bansraj was subsequently prepared in consultation with the Investigating Officer.

14. Deo Narain P.W. 2 has also admitted that at the time of occurrence there were few clouds in the sky. In view of the above circumstances on record, the finding of the learned Sessions Judge that the prosecution version that the occurrence had taken place at 6.00 p.m. and the FIR was lodged at 6-45 p.m. at the police station was not free from suspicion and the possibility that the occurrence might have taken place about 7.00 p.m. or thereafter when the visibility was poor cannot be said to be perverse or based on any extraneous consideration.

15. The fact that the FIR taken down at the dictation of P.W. 2 Deo Narain as stated by him has not been produced by the prosecution but has with-held, hence the statement of the injured in the instant case based according to the contents of the FIR lodged by Bansraj lose their sanctity which otherwise would have been attached to their testimony, being injured witnesses. Under the circumstances, no doubt the presence of P.W. 2 Deo Narain and P.W. 3 Deo Raj, the injured, at the scene of occurrence on account of their injuries cannot be doubted but their testimony is not free from suspicion regarding the time of occurrence and assailants.

16. The learned Sessions Judge has also doubted the presence of Bansraj at the scene of occurrence as, had he been present, he being the main enemy would have received some injuries but in fact he did not receive even a single scratch.

The fact that at the police station, as stated by P.W. 2 Deo Narain, the Head Moharrir had recorded the version regarding occurrence further corroborates that the injured were not taken to the police station by Bansraj but he appears to have reached there subsequently. This finding of the learned Sessions Judge cannot be said to be perverse and when the presence of Bansraj and the FIR lodged by him in the case are held to be suspicious the bottom of the prosecution case is completely knocked out.

17. On behalf of the State it was also urged that there was evidence of another independent witnesses, namely, P.W. 5 Shobhnath who has not doubtfully corroborated the prosecution version and has asserted his presence at the scene of occurrence. On behalf of the respondents it was urged, as was also observed by the learned Sessions Judge, that he was not an independent witness. Though he tried to be so by denying his relationship with Raghunath deceased but admitted that he was also Yadav by caste. In his cross-examination he has admitted that Mahadeo, Ram Jatan and Ram Naresh were his uncles. That Parasnath and Gopinath were sons of Mahadeo, but expressed ignorance that Smt. Lal Dei was wife of Gopi Nath, his own cousin, though she is alive. However, from the copy of the Kutumb Register of the village it is clear that the name of Smt. Lal Dei is entered in that Kutab Register as wife of Gopi Nath and it also shows that Gopi Nath is son of Mahadeo and Sheobhnath P.W. 5 is son of Ram Raj and they belonged to the same family. Ext. Kha 20; another extract of Kutumb Register of village, Tarsara shows that Smt. Lal Dei is daughter of Ram Dass and Raghunath deceased also belonged to the same family. Thus P.W. 5 Shobh Nath was related to the deceased Raghunath. That apart, he has stated that at the time of occurrence in the village Mela he was selling copies and books when he had witnessed the occurrence but he did not make such a statement before the Investigating Officer and even before the Additional District Magistrate (J) at the time of committal proceedings. Thus P.W. 5 Shobh Nath is an interested witness and appears to have agreed to be a witness of the occurrence as the deceased Raghunath was his relation though the present respondent had no motive to kill him.

18. That apart, there is also nothing on record to clinch that Moti Lal, Ram Chandra and Jagat Niwas respondents were friends. Admittedly Ram Chandra had no enmity with either of the injured or with Bansraj.

19. Though the learned-trial Judge has not considered the defence evidence but there is evidence that Jagat Niwas was employed in Bhopal (Madhya Pradesh) as has been specifically admitted by P.W. 2 Deo Narain that Jagat Niwas was employed in Bhopal. He also admitted that Jagat Niwas was brother of one Jagdish Shukla. According to the defence, Jagdish Shukla got Bansraj employed in Ujjain and Bansraj got some loan from Cooperative Society for which Jagdish Shukla had stood as a surety and that loan was not paid. P.W. 1 Jagdish Shukla deposed in support of that circumstances. That apart, there is also evidence that Jagat Niwas was present in Madhya Pradesh on 20th and 21st of July, 1971 and was admitted in a hospital in connection with his treatment. To that effect there is evidence of D.W. 2 Head Constable Shyam Sunder Sharma, D.W. 3 Dr. Rajendra Prasad and also D.W. 4 Raj Narain Upadhyay, Station Master, D.W. 5 Dr. S. C. Tewari and D.W. 6 S. C. Sharma, which make out his plea of alibi quite plausible.

20. From the above discussion of the evidence on record it is clear that the State has failed to show that the judgment of acquittal is clearly wrong, the trial Judge has erred in failing to draw the clear indubitable and irresistible inference from the facts on record and the judgment has resulted in the miscarriage of justice by acquitting the respondents on unreasonable grounds. There may be some force that some other Judge might have arrived at a different conclusion than the trial Judge considering the evidence of the two injured witnesses but that alone by itself would not be a ground to interfere with the verdict of acquittal recorded by the learned Sessions Judge.

21. The conclusion, therefore, is that the appeal has no force and is hereby dismissed. The bail bonds of the respondents are cancelled and sureties discharged and they need not surrender.