

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

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Court : Allahabad

Decided On : Jul-07-2004

Reported in : 2005CriLJ165

Judge : K.N. Ojha, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307

Appeal No. : Cri. A. No. 2326 of 1981

Appellant : Baboo Ram and ors.

Respondent : State of U.P.

Advocate for Def. : Rahul Srivastava, AGA

Advocate for Pet/Ap. : S.N. Mulla, ;I.N. Mulla, ;P.P. Srivastava, ;G.S. Chaturvedi, ;Hemant Kumar, ;D.V. Singh, ;Samit Gopal, ;Bheem Singh, ;Brahm Singh and ;J.N. Mulla, Advs.

Judgement :

ORDER

K.N. Ojha, J.

1. Instant appeal has been preferred against order of conviction and sentence dated 22-9-1981 passed by Shri R. P. Mishra, IV Additional Sessions Judge, Basti

in Sessions Trial No. 103 of 1981 by which Baboo Ram and Dashrath has been convicted under Section 307 read with Section 114. I.P.C. and Raja Ram has been convicted under Section 307, I.P.C. and each one of them has been sentenced to undergo three years R.I.

2. Heard Sri G. S. Chaturvedi, Sri Samit Gopal and Sri Bhim Singh, learned counsel for the appellants and Sri Rahul Srivastava, learned A.G.A. and have gone through the record.

3. It will be significant to mention that during the pendency of the appeal, vide letter dated 28-2-03, the Chief Judicial Magistrate, Basti reported that the appellant Baburam expired in the year 2000. Therefore, the appeal filed by him stood abated.

4. According to prosecution, the complainant Bhagwati Prasad is resident of village Hadia, P. S. Kotwali of district Basti. One bishwa of land was given by him to accused Baboo Ram free of cost. The accused appellant Baboo Ram raised a house on the said land and further encroached upon the land of the complainant on which objection was raised. So the accused were nursing bad blood against Bhagwati Prasad. Having this motive, the appellants Baboo Ram, Raja Ram and Dashrath went to the place where Bhagwati Prasad was sleeping in the night of 17/18 June, 1979. His brother Lal Bahadur and son Budhi Ram and his father Baijnath were also sleeping there. At about 12.30 a.m. in the midnight Bhagwati Prasad got awakened and flashed torch and saw appellants standing near his cot. He raised objection about their presence. Thereupon Lal Bahadur and Budhram also got awakened. In the meantime, accused Baboo Ram and Dasrath exhorted accused Raja Ram to fire at him. Thereupon accused Raja Ram opened fire at the complainant with country-made pistol. The complainant Bhagwati Prasad tried to run away, but: in the meantime, he suffered fire arm injuries at his back. He raised alarm on which several persons reached the place. The accused were successful in making their escape good.

5. Bhagwati Prasad got F.I.R. scribed from his brother Lal Bahadur and went to the police station in rickshaw and lodged F.I.R. by name against the appellants under Section 307, I.P.C. at 1.50 a.m. in the night of 17/18 June, 1979.

6. Bhagwati Prasad was medically examined on 18-6-79 at 2 a.m. by Dr. D. P. Mishra who was on emergency duty and following injuries were found on his body:-

Multiple Gunshot wounds (Eleven) of 1 cm x 1 cm x skin and muscle deep sizes on the back in an area of 13 cm x 8 cm (on both sides of vertebral column). There was presence of tattooing around the wounds and upper and middle part of the back on both sides. There was scorching of the wounds margins.

Injury was caused by fire arm weapon and kept under observation. Advised X-Ray of chest. Duration was fresh.

The chest was X-rayed on 19-6-79 by the Radiologist, Dr. R. C. Verma. No fracture was found.

7. The Sub-Inspector Sri Kanhaiya Prasad Tiwari started investigation. He inspected the torch of the complainant Bhagwati Prasad and also collected pellets and ticklies from the place of occurrence and inspected the place of occurrence and prepared site-plan and after completing investigation submitted charge-sheet against the appellants under Section 307 read with Sections 114 and 307, I.P.C.

8. The appellants denied the charges and it was alleged that, due to enmity, they were falsely involved in the case and adduced no oral or documentary evidence in their defence.

9. The prosecution examined P.W. 1 Bhagwati Prasad, P.W. 2 Lalbahadur, P.W. 3 Budhiram, P.W. 4 Kanihiya Prasad and P.W. 5 Dr. D. P. Mishra.

10. After appreciating evidence of the parties, the learned Additional Sessions Judge held that F.I.R. was promptly lodged against the appellants. There was light, exhortation was made against the accused persons. Alarm was made by Bhagwati Prasad. Thus witnesses had full occasion to see the accused persons who had gone at the house of Bhagwati Prasad to cause fire arm injuries. Discussion was made about injury on back portion of the body, the place of occurrence etc. and the impugned order of conviction and sentence was passed.

11. A perusal of the record shows that in this case, injury was caused from close range as scorching was found in the margins of wounds. Besides it, when Raja Ram reached the door of Bhagwati Prasad, objection was raised by his family members as why he had gone in the odd hours of the night. Thus witnesses had full occasion to see Raja Ram who fired at Bhagwati Prasad. The occurrence had taken place in the night of 17/18 June, 1979 at 12-30 mid-night and F.I.R. was lodged in the same night at 1-50 a.m. If injuries would have been caused at some other place by unknown persons, F.I.R. would not have been so promptly lodged against the accused by the complainant. The statement of P.W. 1 Bhagwati Prasad is fully supported by P.W. 2 Lal Bahadur. Presence of Bhagwati Prasad and Lal Bahadur at their residence in the night is natural. Even P.W. 3 Budhiram, s/o Bhagwati Prasad has stated that in the mid-night he woke up due to the light of the torch and he saw accused persons in the light. Even though he was declared hostile by the prosecution, he stated that he did not see any arm in the hands of any person. Even this statement of Budhi Ram corroborated with the statement of Bhagwati Prasad and Dwarka Prasad that Raja Ram and others were present at their residence in the midnight. Thus, presence of Raja Ram on the spot is proved by statement of P.W. 1 Bhagwati Prasad and P.W. 2 Lal Bahadur.

12. It is said that accused persons had gone in the night to commit murder of Bhagwati Prasad. They had chosen the hour of midnight so that victim and his family could not know the real culprit. It being so, it does not appear natural that when these three persons reached the house of the victim, two of them, Baboo Ram and Dashrath made exhortation because it could have disclosed to the complainant as who were the real culprit, Besides it , if really all these three persons had gone, the other two accused, Baboo Ram and Dashrath also would have caused injuries to Bhagwati Prasad or his family members rather than making exhortation. Therefore, the presence of Baboo Ram and Dashrath at the scene of occurrence and making only exhortation is a fact which does not deserve to be believed. Thus, from the evidence and circumstances of the case, participation of the accused Raja Ram in the commission of the crime appears natural. Even though the multiple gun-shot wound was caused on the back, it does not show any contradiction in the prosecution version and medical report. The statement of the eye-witnesses is clear that when Raja Ram reached the cot,

objection was raised by Bhagwati Prasad and immediately thereafter, Bhagwati Prasad started to run away so that he could save himself but Raja Ram fired. This would have been the position when Bhagwati Prasad started to run away and Raja Ram would have fired from his back side. Therefore, if injury was caused on back of Bhagwati Prasad, it is consistent with the prosecution version.

13. Blood was also found, ticklies and pellets were also recovered by the Investigating Officer. On the sound of firing, witnesses of the locality reached there. This fact further confirms that fire arm injury was caused by Raja Ram to Bhagwati Prasad. This supports the view of learned Additional Sessions Judge that Bhagwati Prasad was in the process of leaving his cot and in the meantime Raja Ram opened fire on him.

14. It is submitted that one of the witness stated that one country made pistol was seen in the hands of accused Dashrath. The presence of Dashrath is not being believed. Therefore, the fact whether he was in the possession of country made pistol is of no significance.

15. The intention of Raja Ram is clear to commit murder of Bhagwati Prasad as he fired on him from back side when Bhagwati Prasad was running away. In case Bhagwati Prasad would not have been successful in running away, his murder would have been committed and the intention of the accused would have been completed. Other injuries could not be caused because Bhagwati Prasad was successful in running away from the place. These circumstances show that the intention of Raja Ram was to commit, murder. Hence learned Additional Sessions Judge has rightly written that the fire missed vital part and landed at back. The circumstances and evidence of this case have been considered from the point of view of motive of F.I.R., light, place of occurrence, statement of witnesses, nature of weapon and injury, conduct of the appellants to have intention of committing murder, conduct of the victim in making his escape good and it becomes confirmed that Raja Ram had intention to commit murder and this was the reason that in the mid-night he went to cause injury to Bhagwati Prasad. The motive is that Raja Ram is son of Baboo Ram to whom land was given by Bhagwati Prasad. Bhagwati Prasad prohibited from making encroachment on his land. Therefore,

Baboo Ram, Raja Ram and his other family members were nursing bad blood against Bhagwati Prasad.

16. In view of the discussion, this Court arrives at the conclusion that the appeal deserves to be partly allowed.

17. Appellant Baboo Ram expired during the pendency of the appeal. The appeal filed by him has already abated. The appeal filed by Dasharath is allowed and order of conviction and sentence passed against him under Section 307 read with 34, I.P.C. is set aside. He is on bail. He need not surrender. His sureties are discharged.

18. The appeal filed by Raja Ram is dismissed. The order of conviction and sentence of three years R.I. passed against Raja Ram is affirmed. He is on bail. His bail bonds are forfeited. Raja Ram be arrested and be sent to jail to serve out sentence.

19. Let the record be sent back to the Court below for compliance and to report to this Court within two months.

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