

Ram Prasad Alias Bhangad and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : May-17-2001

Reported in : 2001CriLJ4412

Judge : G.P. Mathur and ;M.A. Khan, JJ.

Acts : Indian Penal Code (IPC) - Sections 148, 149, 201, 302 and 307

Appeal No. : Cri. A. No. 749 of 1998

Appellant : Ram Prasad Alias Bhangad and ors.

Respondent : State of U.P.

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : O.P. Singh, ;K.K. Dwivedi, ;R.R. Dwivedi, ;K.D. Tewari and ;V.P. Srivastava, Advs.

Disposition : Appeal allowed

Judgement :

M.A. Khan, J.

1. This is an appeal against the judgment and order dated 17-4-1998 passed by Sri I.B. Singh, learned Addl. Sessions Judge, Kanpur Nagar thereby convicting the appellants of the offence punishable Under Section 148, IPC and sentencing them

to under go R.I. for a period of two years each and further convicting the appellants of the offence punishable Under Section 302, IPC and sentencing them to under go imprisonment for life and further convicting all the appellants of the offence punishable Under Section 201, IPC and sentencing them to under go R.I. for a period of one year each. All the sentences were made to run concurrently.

2. Brief facts leading to the prosecution of the appellants are that on 16-9-1996 at about 11.30 a.m. the complainant Ram Lai (PW 1) son of Gulab resident of village Natthapurwa within the circle of police station Gwaltoli, Kanpur Nagar along with his sons Ram Ashrey, Sukh Ram and Sukhdeo were going to Kanpur Court in connection with a criminal case on Cycles. One Cycle was being driven by Ram Ashrey (deceased) and on the back seat, his brother Sukh Ram was sitting. On another, Cycle, the complainant Ram Lal (PW 1) and his third son Sukh Deo were sitting and it was being driven by Sukhdeo. When those four persons reached near the field of one Nokhey in the area of village Mangalpur, all the appellants armed with country made pistols met the complainant Ram Lal (PW 1) and his sons and all of a sudden started firing recklessly. As a result of which Sukh Ram and Ram Ashrey sustained fire arm injuries, fell down and died on the spot. However, Ram Lal (PW 1) and his third son Sukh Deo escaped unhurt and started fleeing away from the scene of occurrence leaving behind the cycle. One Munna (PW 2) had also arrived on or near the sence of occurence on a cycle and he too witnessed the occurrence. Thereafter, according to the prosecution, the appellants dragged away the dead bodies of Sukh Ram and Ram Ashrey and also took away the two cycles left on the spot. Shortly thereafter the complainant Ram Lal (PW 1) and other persons who had assembled on the spot started chasing the culprits with the help of marks of dragging. As soon as Ram Lal (PW 1) and his companion reached towards west near the canal, they found the dead bodies of Sukh Ram and Ram Ashrey lying on the bank of Ganges canal but no cycle said to have been taken away by the appellants was found. Ram Lal (PW 1) then went to the police station and lodged a written report Ext. Ka-2 of the occurence at 11.30 a.m. on 16-9-1996. On the basis of it a chick report was prepared and a G.D. entry was made at the police station. The police force reached the sense of occurrence immediately and Sri Raja Ram Singh (PW 5) the then S.H.O. of police station Gwaltoli, Kanpur City recorded the statement of Ram Lal first informant, and

arrived on the scene of occurrence. He inspected the scene of occurrence and prepared the Memo Ext. Ka-6 thereof. The Investigation Officer took the sample and blood stained earth from the scene of occurrence and prepared its Memo Ext. Ka-7 he also prepared the site plan Ext. Ka-8. The Investigating Officer also reached at the place where the dead bodies of Ram Ashrey and Sukh Ram were found lying on the bank of canal. He inspected that place also and prepared its site plan Ext. Ka-8 thereof. The Investigating Officer further prepared the Panchayatnamas Exts. Ka-10 and Ka-11 of the dead bodies of Ram Ashrey and Sukh Ram and then the bodies were sent to the hospital for post mortem examination and the same was conducted in the district hospital Kanpur Nagar vide post-mortem reports Exts. Ka-4 and Ka-5. After completing necessary formalities of investigation charge sheet was submitted against the appellants.

3. The accused-appellants pleaded not guilty to the charges framed against them and claimed to be tried. Their defence is that they have been falsely implicated in this case due to enmity.

4. In support of its case the prosecution examined five witnesses in all. They are complainant Ram Lal (PW 1), Munna (PW 2), Sher Singh (PW 3), Dr. R.K. Chaturvedi (PW 4) and S.H.O. Raja Ram Singh, Investigating Officer (PW 5). The defence examined no witness.

5. The learned lower Court scrutinised the evidence, believed the prosecution theory, convicted the appellants and sentenced them as above. Feeling aggrieved by the said judgment and order, the present appeal has been filed.

6. We have heard learned counsel for the parties at length and we have gone through the record. The ocular evidence adduced by the prosecution in this case consists of the statement of Ram Lal complainant (PW 1) and Munna (PW 2) and no other witness of fact has been examined by the prosecution in this case.

7. As regards Ram Lal (PW 1), it may be observed that he is father of the two persons, namely Ram Ashrey and Sukh Ram who had died in the alleged occurrence and therefore, he can be termed as an interested witness. However, we do not intend to discard the testimony of Ram Lal (PW 1) simply because of

the fact that he is father of the two deceased persons in this case. His statement however, will have to be scrutinised with care and caution and it will have to be seen as to whether Ram Lal (PW 1) was at all present on or near the scene of occurrence or whether he had at all witnessed the occurrence. A close scrutiny of the statement of Ram Lal (PW 1) shows that he tried to conceal the truth and has given evasive replies to many questions put to him by the defence. At first, he has stated that he did not go to jail in any case at any point of time and similarly his sons Ram Ashrey and Sukh Ram also did not go to jail nor they were ever prosecuted in any criminal case. However, he immediately resiled from this earlier statement and admitted that he and his sons were being prosecuted in a case Under Section 302, IPC, earlier to the present occurrence and in connection with that case, he had his two sons Sukh Ram and Ram Ashrey were lodged in jail. This witness however, again tried to resile from this statement and denied that he was ever lodged in jail. The statement of Munna (PW 2) in this connection is however, relevant and he in his cross-examination has admitted that he was prosecuted in a case Under Section 307, IPC in connection with the firing at one Devi Mallah of Unnao and in that case all the three sons of Ram Lal (PW 1) were accused with him and all of them had gone to jail. This PW 2 (Munna) has also admitted that the two deceased persons of this case were also being prosecuted in other murder case and FIR of that case was lodged by one Sri Ram. Thus from the statements of Ram Lal (PW 1) and Munna (PW 2) it can be safely gathered that antecedents of Ram Lal (PW 1) and his sons were not good and they were involved in a number of criminal cases and in a number of heinous offences and they cannot be termed as up right persons. It is in this back ground that the statements of Ram Lal (PW 1) and Munna (PW 2) will have to be scrutinised and examined. It will not be out of place to mention here that Munna (PW 2) is also a relation of Ram Lal (PW 1). In the last paragraph of his cross-examination he has admitted that. Ram Lal (PW 1) is his grand father and he treats him as such Munna (PW 2) has also admitted that he has been co-accused with Ram Lal (PW 1) and his sons in a number of criminal cases. Thus Munna (PW 2) cannot be termed as an independent witness and he is definitely a relation and interested witness and besides it a chance witness as well.

8. The first point that has been argued before us by the learned counsel for the appellants is that presence of Ram Lal (PW 1) and his relation Munna (PW 2) on or near the scene of occurrence is highly doubtful. In this connection our attention has been drawn by the learned counsel for the appellants to the fact that though the enmity or ill will, if any, of the appellants was with Ram Lal (PW 1), who according to the prosecution was also available to the appellants at the time of alleged occurrence, yet Ram Lal (PW 1) or his third son Sukh Deo did not at all sustain any injury in the alleged firing. Ram Lal (PW 1) has himself admitted that the two cycles having been side by side on which he and his three sons were going parallel and all of a sudden the appellants appeared before them from the field of Nokhey and started firing. If the alleged firing was by as many as seven persons from a close range, then there was hardly any occasion with Ram Lal (PW1) to escape unhurt and for Munna (PW 2) to run away from the scene of occurrence. The miraculous escape from PW 1 Ram Lal and Munna (PW 2) from the scene of occurrence thus causes doubt on their presence on the scene of occurrence. Even otherwise the presence of these two PWs of fact on the scene of occurrence is highly doubtful. According to Ram Lal (PW 1) and Munna (PW 2) all the appellants and their companions were armed with fire arms and they had allegedly fired thereby causing death of Sukh Ram and Ram Ashrey. The post mortem report Ext. Ka-4 of the dead body of Sukh Ram, however, shows that besides sustaining one fire arm injury, there were as many as six injuries on his body and out of them as many as two injuries were caused by blunt object. Similarly the post mortem report Ext. Ka-1 of the dead body of Ram Ashrey shows that Ram Ashrey also did sustain injuries caused by blunt object. The injury No. 4 shows that it was lacerated wound on the bone deep with neck bone fractured. It is not disputed in this case that Ram Ashrey and Sukh Ram sustained injuries caused by blunt object besides fire arm injuries and the Doctor who conducted the post mortem has admitted that these injuries were caused by blunt object. There is absolutely nothing on record to show and there is no evidence that any of the appellants was armed with any blunt object or that the fire arm was used by any of the appellants from the blunt side. These injuries caused to the two deceased persons by blunt object cannot be said to be superficial and there is also nothing on record to show that they were as a result of fall on the hard surface or

otherwise. Thus the medical evidence on record is not consistent with the ocular evidence and there is nothing on record to show as to how the two deceased persons sustained injuries caused by blunt object. Learned State Counsel has drawn our attention to the fact that after having fired at the two deceased persons, the appellants had dragged away the bodies up to the bank of river and in the course of that dragging injuries could have been caused. However, the evidence of Ram Lal (PW 1) and Munna (PW 2) on record shows that they had not seen the incident of dragging. Ram Lal (PW 1) has tried to state that immediately after the firing, he took to his heels along with Munna (PW 2) leaving behind the two cycles. This witness has further stated that he made a noise which attracted many persons to the scene of occurrence and they seeing the mark of dragging of cycles a chase was given up to the bank of Ganges canal where the dead, bodies of his sons Sukh Ram and Ram Ashery were found lying but the cycles were not. there. The statement of Munna (PW 2) on this point is however different and he has stated that at the time of occurrence he found Ram Lal (PW 1) and his sons Sukh Deo making a noise. He enquired from Ram Lal and Sukh Deo as to what has happened and he was told that the miscreants have killed his sons. He has further stated that he left behind his cycle and ran away along with Ram Lal and Sukhdeo. Thus Munna (PW 2) has nowhere stated that immediately after the alleged firing and murder chase was given to the culprits. Munna (PW 2) has further stated that after the incident village persons assembled and again he, Ram Lal and Sukh Deo reached the scene of occurrence and found no body present on the scene of occurrence. Thereafter he and other village persons including Ram Lal and Sukhdeo came in search of Sukh Ram and Ram Ashrey. The search was made allround and then on the bank of river where dead bodies of Sukh Ram and Ram Ashrey were found. From the statement, of Munna (PW 2) who is also admittedly a close relation of Ram Lal (PW 1), it can be safely gathered that this witness was either not present on or near the scene of occurrence or that the occurrence did not take place in his presence and at least the alleged chase was not given to the culprits immediately after the alleged assault. In this connection the statement of Investigating Officer and the site plan reported by him are relevant Site Plan Ext. Ka-6 prepared by the Investigating Officer shows that there were 5 drops of blood towards west of the field of Nokhey and thereafter no trail of blood was found and

present. There was no mark of dragging on or near the scene of occurrence and it was also not shown in the site plan. There was also no mark of dragging of cycles. In the site plan Ext. Ka-6 it is also not shown as to from which the culprits had fired at the victims. It is also not pointed out as to from which place the prosecution witnesses had seen the occurrence. Thus the site plan Ext. Ka-6 prepared by the Investigating Officer at the pointing out of the complainant Ram Lal (PW 1) also does not support the prosecution case and the fact that immediately after the firing, the bodies were dragged away up to the bank of river is not supported by any other reliable evidence and this shows that Ram Lal (PW 1) and Munna (PW 2) were not at all present on or near the scene of occurrence and had there been reckless firing by as many as 7 persons, there was hardly any escape for Ram Lal (PW 1) and Munna (PW 2) to go unhurt because the principal victim of the appellants would have been Ram Lal (PW 1) and he could not have been spared by the appellants.

9. The learned A.G.A. has pointed out that it is a broad day light murder case and the alleged occurrence took place on 16-9-1996 at 10.00 a.m. and the F.I.R. was lodged the same day at 11.30 a.m. and there could not have been any dispute about the mis-identity of the assailants. In this connection we may observe that the medical evidence on record belies the presence of Ram Lal (PW 1) and Munna (PW 2) on the scene of occurrence and even otherwise the statements of these PWs are of such nature that their presence on or near the scene of occurrence is highly doubtful. There is statement of Rarn Lal (PW 1) that his sons Sukh Ram and Ram Ashray did sustain fire arm injuries and they died on the spot and thereafter their dead bodies were dragged away upto the bank of the Ganga river. Besides the fact that trail of blood up to the bank of river was absent and there was also no mark of dragging, it may be observed that there was no occasion with the culprits to have dragged away the two dead bodies and the cycles, once culprits had achieved their goal, dragging up to a distance of few furlongs, of the dead bodies and that too in the jungle, in our opinion, was futile exercise and the persons who had committed the murders could not have thought of undertaking such a big exercise without any motive. There is nothing on record to show that the culprits after committing murder had tried to dispose of the dead bodies or thrown away in the water of Ganga. In the absence of such evidence, it cannot be

believed, that the story of alleged dragging by the appellants is true and it cannot also be believed that Ram Lal (PW 1) and Munna (PW 2) were present to see that alleged dragging. The photography of the scene of the occurrence, place of alleged firing and the place on which the two dead bodies were found lying, shows that it was all jungle area and presence of any body in that area even in the day time can be safely doubted. It is mentioned by the Investigating Officer himself that the entire area where the alleged firing took place and from where dead bodies were found was a lonely area and is at a distant place from the residential area. Therefore the presence of the witnesses on or near the scene of occurrence in that: jungle is ruled out. and as we have observed above that Ram Lal being father of the two deceased persons and Munna (PW 2) being a close relation of the deceased persons, had come out to depose against the appellants out of all ill will and their presence on or near the scene of occurrence is highly doubtful and cannot at all be believed particularly considering their criminal antecedents. The prosecution has thus not succeeded in proving that the appellants have committed the murders of the two deceased persons and at any rate the case against the appellants is not proved to the hilt and beyond all reasonable doubt, the benefit of which must go to the appellants and they deserved to be acquitted of the charges framed against them.

10. We accordingly allow the appeal. The judgment and order dated 17-4-1998 passed by learned Addl. Sessions Judge, Kanpur Nagar are hereby set aside. The appellants are held not guilty of the offences punishable Under Sections 148, 302 read with Section 149, I.P.C. and also Under Section 201, I.P.C. They are acquitted of the charges framed against them. The appellants are in jail. They shall be released forthwith if not wanted in any other case.