

**State Vs. Ramesh**

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**SooperKanoon Citation :** [sooperkanoon.com/488362](http://sooperkanoon.com/488362)

**Court :** Allahabad

**Decided On :** Feb-24-2000

**Reported in :** 2000CriLJ2855

**Judge :** R.R.K. Trivedi and ;M.C. Jain, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149 and 302

**Appeal No. :** Govt. Cri. Appeal Nos. 2418, 2419 and 2420 of 1980

**Appellant :** State

**Respondent :** Ramesh

**Advocate for Def. :** Keshav Sahai, ;D. Sahai and ;Amar Saran, Advs.

**Advocate for Pet/Ap. :** A.G.A.

**Disposition :** Appeal dismissed

**Judgement :**

**M.C. Jain, J.**

1. These three criminal appeals have been filed by the State against the judgment of acquittal dated 23-7-1980 passed by Sri Manphool Singh, the then II addl. Sessions Judge. Bulandshahr in S.T. 294, 385 and 398 OF 1979 which were tried together. These three appeals are being decided by this common judgment,

treating Criminal Appeal No. 2418 of 1980 as leading appeal. All the seven accused opposite parties were accused in one or the other sessions trial numbered above. They are 1. Ramesh. 2. Yad Ram, 3. Om Prakash son of Yad Ram, 4. Manvir son of Yad Ram, 5. Brahm Deo alias Brahmjit, 6. Soran Lal and 7. Om Prakash son of Shankar. They were tried for the offences under Section 147, 148 and 302 I.P.C. read with Section 149 I.P.C. All of them have been acquitted by the impugned judgment. Aggrieved, the State has preferred these three appeals.

2. The relevant facts may be taken note of. The case against the accused opposite parties Ramesh and Om Prakash son of Shankar was based on their identification while the rest were nominated in the second report of the incident. Ramesh and Om Prakash son of Shankar had allegedly been hired by other accused opposite parties for the commission of this crime. Accused opposite parties Om Prakash and Manvir are the sons of accused opposite party Yad Ram. The accused opposite party Braham Deo alias Brahmjit is the nephew of Yad Ram and accused opposite party Soran is the cousin of Yad Ram. Kalawati and her daughter Kanti were shot dead in the incident which took place in between the night of 17/ 18-1-1977 at about 11 P.M. in their kotha situate in village Sabit Garh. Police Station Pahasu, District Bulandshahr where they were sleeping along with Praveen Kumar PW 1, a boy aged about 12 or 14 years (son of Kanti). The motive was said to be greed or lust for about 40 bighas of land which originally belonged to Kanchhi Prasad-real brother of accused opposite party Yad Ram. He had died on 9-4-1976 leaving behind his widowed wife deceased Kalawati and daughter deceased Kanti Praveen Kumar PW 1 was the sole male child of Kanti Devi. On the death of Kanchhi Prasad, his 40 bighas of land came to be inherited by his widow Kalawati. She had executed a will on 26-12-1976 in favour of Praveen Kumar who was her maternal grandson and was also her adopted son. Yad Ram and his other family members who were close collaterals of Kalawati had an evil eye on 40 bighas holding of Kanchhi Prasad and they were bent upon to usurp the said land resorting to dubious tactics. In order to safeguard the interest of Praveen Kumar PW 1 in respect of the said land in whose favour she executed unregistered will dated 26-12-1976, she wanted to get the will registered. Shanker PW 3 had been employed as a domestic servant by Kalawati and he was sent to fetch Veer Pal

PW 2 and Rampal from their native village to stand as witnesses to the will which was desired to be registered. These two attesting witnesses were distantly related also to Kalawati and they had come to the village Sabit Garh in the evening of 17-1-1977. Yad Ram and his family members did not relish the idea of Kalawati of executing a registered will in the name of Praveen Kumar PW1.

3. In order to frustrate the attempts of Kalawati to make a testamentary disposition of her land in favour of Praveen Kumar PW1 with a view to usurp the land of Kanchhi Prasad to which Kalawati had succeeded after his death, Yad Ram and others hatched a conspiracy to liquidate Kalawati and her daughter Kanti Devi, hiring accused opposite parties Ramesh and Om Prakash son of Shankar who were outsiders. They allegedly formed an unlawful assembly. Accused opposite parties Om Prakash, Manvir (both sons of Yad Ram) and Brahmdeo alias Brahmjit had country made pistols while the outsiders Ramesh and Om Prakash son of Shankar had guns. Yad Ram and Soran accused opposite parties extended help to the abovenamed five assailants while they were scaling down the wall of the house of deceased ladies after performing the job of their murder.

4. As to the actual incident, the prosecution case was that Praveen Kumar PW 1 was sleeping with his mother and maternal grand mother in a Kotha while Veer Pal PW 2. Rampal and Shanker PW3 were sleeping in the nearby Duari adjoining the said Kotha on its north western side. In between the fateful night at about 11 P.M. the assailants entered the Kotha of Kalawati all of sudden and fired a shot of Kalawati which awakened Kanti and her son Praveen Kumar PW 1 who were sleeping on a common cot. Smt. Kanti Devi was the deserted and neglected wife of Rajendra Sharma P.W. 4. She grappled with one of the assailants by catching hold of his gun questioning as to why her mother had been killed. Then some of the assailants fired two shots on her chest and belly region and she (Kanti) also died instantaneously. Praven Kumar PW 1, apprehending danger to his life, became panicky and terrorstricken. The sound of shots awakened Veer Pal PW 2. Rampal and Shanker PW 3 also. There was a lantern glowing in the Kotha and another one in the duari. Rampal had a torch also which he flashed. The faces of the five assailants were allegedly seen by them out of whom three were Om Prakash. Manvir (both sons of Yad Ram) and Brahmdeo alias Brahmjit. Two

others were not known to them from before. Later on they came to be identified as Ramesh and Om Prakash son of Shankar on the basis of identification parade held during the course of investigation. The five assailants passed through the Sehan of the northern side of the Kotha in order to get up over the northern wall with the help of nearby cart. Veer Pal PW 2, Rampal and Shanker PW 3 also went up to the north western corner of the house of Kanti wherefrom they recognised the remaining accused persons also, namely. Yad Ram and Soran Lal. They allegedly helped the remaining five accused opposite parties in scaling down the wall and running away towards the jungle. The witnesses then returned to the Kotha and found Kalawati and Kanti lying dead. Praveen Kumar PW 1, was found to be overwhelmed by the agony of the murder of her mother and here maternal grandmother committed in his presence. He was too shocked to utter a word.

5. After the incident Braj Bhushan son of Soran accused opposite party lodged report Ext. Ka 14 the Police Station on 18-1-1977 at 6.15 a.m. The report stated that about four months back a dacoity had been committed in the house of Kalawati by Mangta, Indar, Bhurji, Mahipal, Samar and Anil. These persons were challaned against whom Kalawati had filed some affidavit in the Court to oppose their bail. The said persons were threatening Kalawati and her daughter Kanti (who used to live with their mother Kalawati being estranged with her own husband) with dire consequences. The first information report stated that in between fateful night at about 11 p.m. Mangta and his associates appeared at the house of Kalawati and murdered Kalawati as well as her daughter Kanti by firing.

6. The investigation was taken by K.P. Singh C.W 2 who was then SO of Police Station Pahasu along with another police personnel rushed to the spot, got the Panchayatnamas of the dead bodies of the two ladies prepared and engaged himself in other needful activities relating to investigation. The dead bodies were sent for postmortem. The post-mortem over the dead body of Kanti Devi was conducted on 19-1-1977 at 3.30 p.m. by Dr. V.S. Gupta PW 5 post-mortem over the dead body of other lady Kalawati was conducted by him on 19-1-1977 at 4.15 p.m. Suffice it to say in this regard that the death of both the ladies had occurred due to shock and haemorrhage resulting from gunshot injuries.

7. As per the prosecution, the Investigating Officer K.P. Singh CW 2 in connivance with the accused opposite parties and his superior officer, namely, V.K. Verma, CO. CW I did not conduct the investigation on proper lines, though the light had come to be thrown during the course of investigation as to the real culprits of this crime viz the accused opposite parties, Praveen Kumar PW 1 stayed in village Sabitgarh for two days after the incident and then went with his father Rajendra PW 4 in Ghaziabad where he stayed for two or three months. Ultimately he went to village Debai to stay with his distantly related maternal uncle Bhuwaneshwar Prasad PW 16 who ultimately put the prosecution machinery into motion by moving applications and other representations to S.P. Bulandshahr and the Speaker of Vidhan Sabha.

8. The investigation exchanged hands. Ultimately the statements of eye-witnesses were recorded and the arrest of the accused opposite parties took place. Ultimately, charge-sheet was submitted against the accused opposite parties by Raghuraj Singh PW 17 (Inspector C.B.C.I. D.).

9. The case of the accused opposite parties was of denial.

10. In order to prove its case, the prosecution examined three eye-witnesses, namely, Praveen Kumar PW 1, Veer Pal PW 2 and Shanker PW 3 Rajendra Prasad father of Praveen Kumar PW 1 was also examined as PW 4. Bhuwneshwar Prasad owing to whose efforts the investigation had changed and the accused opposite parties came to be booked for trial was also examined as PW 16. The rest of the witnesses examined as the trial were the Investigation Officers, Doctors and other police witnesses.

11. The learned trial Judge did not find case to be proved against the accused opposite parties and afforded them the benefit of doubt, also observing that the Investigating Officers too spoiled the case with calculated and deliberate design without making sincere and serious efforts to solve the mystery surrounding this double murder of innocent ladies. The State has come up in appeal against the acquittal recorded by the Sessions Judge.

12. We have heard learned A.G. A. in support of these three appeals and Sri Amar Saran, Advocate appearing on behalf of the accused opposite parties in Criminal Appeal Nos. 2419 of 1980 and 2420 of 1980. We have also examined the evidence on record.

13. We first take up the case of the accused-opposite parties Ramesh and Om Prakash son of Shankar the alleged hired assailants against whom the evidence is of identification. It would be recalled that the incident took place in between the night of 17/18-1-1977. The accused-opposite party Ramesh was sent to jail after his arrest on 28-3-1979 and his identification took place on 16-4-1979 Praveen Kumar PW 1, Veer Pal PW 2 and Shanker PW 3 identified him. Accused-opposite party Om Prakash son of Shankar was sent to jail after his arrest on 8-7-1979 and his identification took place on 13-8-1979. He was identified by Praveen Kumar PW 1 and Shanker PW 3. Thus the identification of the former took place nearly 2 1/4 years after the incident and that of the latter after about two years and seven months of the incident. Having regard to the doctrine of depreciation in memory reliance could not be placed on the testimony of identifying witnesses when the identification itself had taken place after such long time. In this view of the matter, no finding of guilt could be recorded against these two accused-opposite parties for this patent weakness of the prosecution evidence against them.

14. We now take up the case of the remaining five accused-opposite parties, namely Yad Ram, Om Prakash, Manbir both sons of Yad Ram, Brahm Deo alias Brahmjit and Soran Lal. All of them were collaterals of the deceased ladies and are the close relatives amongst themselves, relationship having been detailed in the earlier part of the judgment. On a careful consideration of the prosecution evidence against them too, we are of the definite opinion that they could also not be held to be guilty on the basis of weak and infirm evidence adduced against them at the trial. Putting evidence adduced by the prosecution against them in judicial scale and analysing the same in the light of attending circumstances, there does persist serious doubt about their actual participation in the crime and finding of acquittal recorded by the Additional Sessions Judge sounds to be perfectly justified. We would do well to state out our brief reasons for agreeing with the conclusion arrived at by the learned Additional Sessions Judge. It may first be

pointed out that the motive assigned by the prosecution against the accused-opposite party for the commission of this crime does not have the alternation of logic. The motive is said to be that they wanted to usurp the land left by Kanchhi Prasad to which his wife Kalawati deceased had succeeded and in respect of which she wanted to execute a registered will in favour of her maternal grand-son Praveen Kumar PW 1, Kanchhi Prasad had left no other heir than his wife Kalawati deceased. Kalawati had adopted his maternal grandson Praveen Kumar PW 1. Therefore, the accused-opposite parties could not succeed to the land of Kanchhi Prasad so long as Praveen Kumar PW 1 was there as he had been adopted by Kalawati. Praveen Kumar PW1 was also allegedly sleeping in the same Kotha in which his mother Kanti and maternal grand mother Kalawati were murdered. However, it has come in his evidence before the Court that the assailants did not open fire upon him. If the accused opposite parties wanted to clear the way to get the land of Kanchhi Prasad, they would have necessarily liquidated Praveen Kumar PW 1 also who was there inside the Kotha with the other two ladies.

15. That apart, it is lost in the womb of obscurity as to why the eye witnesses did not disclose the names of these five accused-opposite parties for considerable time Praveen Kumar PW 1 named the accused opposite parties Manvir and Om Prakash as assailant along with two unknown persons seen by him inside the Kotha when the murders were committed. He admitted before the Court that on the day following the night of the incident the police had come to the village and a number of villagers had also collected. But he did not disclose the names of any assailant to any of them. For the first time, he disclosed the name to his father after about for days of the incident with whom he had gone to Ghaziabad. The affidavit disclosing the names of assailants was filed by him in the Court after about a year. The revelation made by Veer Pal PW 2 in his cross-examination is that after 8 to 10 months of the incident he had met Dr. Bhuwadeshwar (PW 16) and then he had disclosed the entire story to him. He also says that after about 8 to 15 days of the incident, he had made disclosure to Rajendra Sharma PW 4 (father of Praveen Kumar PW 1). He too filed affidavit in the Court in support of the prosecution story after about a year of the incident. The affidavit by Shanker PW 3 was also filed in support of the prosecution story as late as about one year at the

instance of Bhuwaneshwar Prasad PW 18. According to him, out of fear he did not disclose the names of assailants to any one in the night to the incident. After about four days he allegedly made disclosure to Rajendra Sharma PW 4 and one Bhumi Prakash Gaur.

16. The testimony of Rajendra Sharma PW 4 (father of Praveen Kumar PW 1) also does not advance the prosecution case any further. According to him, Praveen Kumar PW 1 had revealed the names of the assailants to him on 23-1-1977. He allegedly made an application to S.P. Bulandshahr on 4-2-1977, but did not disclose the name of any assailant therein. He allegedly met the D.I.G. at Meerut on 22-3-1977 and made over a written report to him (Ext. Ka 11). In it also he did not disclose the names of accused-opposite parties Soran Lal and Brahm Deo alias Brahmjit. It is his own admission that he had come to know the names of the assailants on 23-1-1977 itself. Though he is not an eye witness of the incident but he is the father of Praveen Kumar PW 1 (eye-witness) who had come with him to Ghaziabad after two days of the incident. The queer way in which Rajendra Sharma PW 4 conducted himself goes unexplained and creates genuine doubt as to the actual participation of the accused-opposite parties in this crime. True, the investigation of the case also does not seem to have been carried on fair lines to solve this double murder of two innocent ladies, but the finding of guilt against the accused opposite parties cannot be recorded on the strength of fantastic possibilities giving flight to imagination. As per the established principles of law, it has to be based on the rational deduction made on the probative force of the evidence and attending circumstances.

17. Our conclusion is that in the present case no other finding excepting that of acquittal could be recorded on analysing the evidence on record together with concomitant circumstance in a lawful and adjudicatory manner. The learned Sessions Judge has prepared an elaborate judgment satisfactorily dealing with all the relevant aspects of the case. It is really unfortunate that two innocent ladies were murdered by shooting and the crime goes unpunished. But the Court of law is to be guided by the legal evidence adduced before it. The shocking nature of the crime cannot induce an instinctive reaction against dispassionate examination of law and facts. On overall assessment of the evidence of the present case and the

relevant circumstances there persists serious doubt as to the accused- opposite parties being the real assailants. Possibility cannot be ruled out that the real assailants were some others having regard to the fact that a dacoity had also been committed in the house of two- ladies a few months before the incident in which certain others had been named and were facing trial from whom the two ladies apprehended danger.

18. In the net result, we see no reason whatsoever to interfere with the finding of acquittal recorded by the learned trial Judge in favour of all the seven accused- opposite parties. We are inclined to dismiss all the three appeals.

19. In view of the foregoing discussion, we do not locate any merit in these three criminal appeals and they are accordingly dismissed. Accused opposite parties Ramesh, Yad Ram, Om Prakash son of Yad Ram, Manvir son of Yad Ram, Brahm Deo alias Brahmjit, Soran Lal and Om Prakash son of Shankar are on bail. The need not surrender. Their personal bonds and bail bonds are cancelled.

20. Let a copy of his judgment along with the record of the case be immediately sent to the Court below for necessary entries in the concerned registers under intimation to this Court within two months.

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