

Hori Lal Vs. State

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Court : Allahabad

Decided On : Feb-23-2000

Reported in : 2000CriLJ3804

Judge : J.C. Gupta and ;S.K. Agarwal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 149 and 307; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Criminal Appeal No. 1302 of 1980

Appellant : Hori Lal

Respondent : State

Advocate for Def. : A.G.A. and ;A.K. Verma, Adv.

Advocate for Pet/Ap. : K.K. Mishra, Adv.

Disposition : Appeal allowed

Judgement :

J.C. Gupta, J.

1. The appellant named above has preferred this appeal against the judgment and order dated 20-5-1980 passed by Sri I.P. Singh the then III Additional Sessions Judge, Etah convicting and sentencing the appellant to one year R.I. under

Section 147, I.P.C. and to life imprisonment under Section 302 read with Section 149, I.P.C. The appellant has further been sentenced to four years R.I. under Section 307, I.P.C. read with Section 149, I.P.C. All sentences are to run concurrently.

2. The prosecution case in brief is that in the night of 23-3-1979 Ram Dev PW-1, his father Ram Prakash the deceased and other family members were sleeping in their house situated in village Lauraiya within the area of police station Patiali. At about 11 p.m. 15-16 dacoits raided their house. Deceased Ram Prakash somehow woke up and challenged the dacoits whereupon the dacoits fired upon him. Ram Prakash returned the fire towards the dacoits with his licensed gun. In return further firing made by the dacoits injured Ram Prakash and he fell down. Ram Dev PW-1 also in the meantime got up and picked up the gun of his father and entered into a kothri and closed the same from inside. He also opened fire on the dacoits from the window of the kothri. In the incident Smt. Chandrawati mother of Ram Dev also sustained fire arm injuries at the hands of the dacoits. On hearing the sound of firing villagers including Bahoran Singh PW-2, Prem Pal Singh PW-6 and Rajendra Singh PW-7 gathered all around the house of Ram Dev and they also resorted to firing from their licensed guns. Two of the dacoits sustained fatal gun shot injuries and they died on the spot. Seeing the enormity of counter attack by villagers the dacoits left the house and fled away without looting any booty. The dacoits were alleged to have been seen in the torch light and the witnesses claimed that if confronted with they would identify them. However appellant Hori Lal is said to have been identified amongst the dacoits.

3. After the dacoits had left the scene of occurrence, Ram Prakash succumbed to his injuries and expired within an hour. Ram Dev then himself wrote down the First Information Report Ex. Ka. 1 and lodged the same at police station Patiali at 7.15 a.m. on 24-3-1979 on the basis of which case was registered and the same was investigated by S.I. Rameshwar Singh PW-8. He took into possession the dead bodies of Ram Prakash and two unknown dacoits and sent them for post mortem examination. Spot inspection was made and blood was collected from the scene of incident. Six empty shells of cartridges were also found on the spot. Four empty cartridges of 12 bore were given to the I.O. by Ram Dev which were also taken

into possession. Appellant Hori Lal was arrested on 25-3-1979 and after completing the investigation the appellant alone was charge sheeted and was sent for trial.

4. Before the trial Court prosecution examined nine witnesses in all. Out of whom PW-1 Ram Dev, Bahoran Singh PW-2, Prem Pal Singh PW-6, Rajendra Singh PW-7 are witnesses of fact.

5. Dr. P.N. Verma PW-3 proved the post mortem report of the deceased Ram Prakash as Ex. Ka. 2. Only one ante mortem fire arm injury was found on the anterior aspect of right side of chest with blackening present. This injury had an exit wound on right side back. The 8th and 10th ribs were found fractured. The right lung was lacerated and congested. The pleura was also lacerated. In the opinion of the doctor the cause of death was shock and haemorrhage as a result of ante mortem injuries.

6. PW-4 is a formal witness, who had escorted the dead body from the place of occurrence to the mortuary in a sealed state. PW-5 is also a formal witness who proved the chick report and the relevant general diary entry.

7. PW-8 Rameshwar Singh, S.I. is the Investigating Officer while PW-9 is Dr. Daya Shanker who had medically examined Smt. Chandrawati on 24-3-1979 at 7.30 a.m. and has proved her injury report as Ex. Ka. 4, which shows that Smt. Chandrawati had also sustained gun shot injuries in the night of incident.

8. Accused Hori Lal in his statement recorded under Section 313, Cr. P.C. denied the prosecution allegations and stated that he has been falsely nominated due to enmity.

9. Finding the case of the prosecution proved against the appellant beyond doubt, the learned Additional Sessions Judge has convicted and sentenced the appellant under various counts as stated above.

10. We have heard Sri. K.K. Mishra learned counsel appearing for the appellant and Sri A.K. Verma learned A.G.A. for the State.

11. Learned counsel for the appellant argued before the Court that the circumstances appearing in the case indicate that an armed dacoity was attempted at the house of the deceased and the appellant has been nominated as an accused due to enmity or under suspicion.

12. The factum of Ram Prakash deceased having died on account of fire arm injuries is neither disputed nor challenged by the appellant's counsel. It could also not be disputed that Smt. Chandrawati the wife of the deceased had also sustained gun shot injuries as is evident from her injury report Ex. Ka.6. The X-ray report Ex. Ka-2 has further revealed that there were four Radio-opaque shadows in the area of skull. Further the factum of incident has not been disputed. Otherwise also it is fully borne out from the evidence on record that 15-16 dacoits had raided the house of Ram Prakash deceased during the relevant night wherein Ram Prakash sustained fatal fire arm injuries at the hands of dacoits and in the same incident. On account of firing made by the deceased, his son Ram Dev, and other villagers two of the dacoits were gunned down on the spot.

13. The only question that arises for consideration is whether the present appellant was also present amongst the dacoits who had raided the house of the deceased?

14. In order to substantiate the allegation that appellant Hori Lal had participated in the dacoity, the prosecution relied upon the testimony of four witnesses of the fact namely, Ram Dev PW-1, Bahoram Singh PW-2, Prem Pal Singh PW-6 and PW-7 Rajendra Singh. Smt. Chandrawati who as per the prosecution case had sustained gun shot injuries during the course of this incident was withheld by the prosecution for no ostensible reason. She being an injured must have come in close contact of the dacoits and if the appellant was also present amongst the dacoit his presence could have been best testified by her. Her non-production at the trial creates serious doubt in the prosecution story as far as participation of the appellant is concerned. PW-6 Prem Pal Singh is one of those villagers who had fired upon the dacoits from top of the roof of his house. He categorically stated that all the dacoits were unknown and he had not seen accused Hori Lal amongst the dacoits. This witness was declared hostile and was cross examined on behalf of the State but nothing has come in his evidence to connect the appellant with the crime in

question.

15. FW-1 Ram Dev in his examination-in-chief itself has specifically stated that when he woke up he saw 15-16 dacoits near the door of his house who were having guns, spears and lathis but he could not identify any dacoit at that time. He further stated that when his father sustained fire arm injury, he threw his gun towards him and he rushed inside his kothri which he bolted from inside and fired on the dacoits from the window of the room. When villagers resorted to firing, the dacoits took to their heels and when they were running, he identified the appellant in the light of the torches which were being flashed by the dacoits themselves. In cross examination he stated that when the dacoits were in the Courtyard he suspected that Hori Lal was one of them but he identified him only when the dacoits were fleeing. It has come in evidence that the dacoits first rushed towards west and then to north. According to FW-1, he had taken shelter inside the kothri which was situated to the south of the verandah of his house the door of which opened in the north. He further stated that this kothri had only one window in its northern wall. He was very specific in saying that he had fired upon the fleeing dacoits from the window of this kothri and identified them when they were fleeing. In the site plan Ex. Ka. 13, prepared by the Investigating Officer after spot inspection, this 'kothri' is shown by letter 'B'. The site plan further indicates that to the west of this kothri there is house of Ram Gopal and in the south are situated the house and Baithak of Narpat Yadav and Bahoran respectively. The witness further admitted that he came out of this kothri only after the dacoits had fled away. In this situation, it is highly doubtful that it was possible for this witness to have clearly seen the faces of the dacoits through this window especially when the dacoits were fleeing from west to south outside his house. It is also pertinent to note here that according to this witness, accused Hori Lal was known to him from before the incident but he did not know his father's name. It is, therefore, also doubtful that this witness knew the appellant from before the incident. It is also note-worthy that neither this witness nor any other witness has specified as to with what weapon appellant Hori Lal was armed with nor any specific or overt act is assigned to him. It was admitted by PW-1 Ram Deo in his cross-- examination that three police constables of the police out-post had arrived at his house after the occurrence but amazingly he did not disclose to them the name of the appellant as

one of the dacoits, though the police constables stayed at his house throughout the night. This conduct of this witness was most inconsistent with normal human behaviour and creates a heavy shadow of doubt in the presence, of the appellant at the time of dacoity and needle of suspicion indicates that perhaps the appellant was introduced later on in the case as a result of manoeuring and consultation.

16. PW-2 Bahoran Singh stated that he was sleeping in his house and was awakened by the sounds of fire. From his window he saw that 15-16 dacoits were present at the house of Ram Prakash and they were firing. Firing was also being made from inside the house of Ram Dev. He also opened fire on the dacoits from his licensed gun and identified appellant Hori Lal amongst the dacoits. According to his statement dacoits had fled towards east which is contrary to the statement made by PW-1 and to the position shown in the site plan. In cross examination, he admitted that he made firing from his roof and from there only he saw the dacoits. He also stated that he had shown the place to the Investigating Officer from where he had fired and saw the dacoits. However that place is not shown in the site plan prepared by the I.O. and the Investigating Officer could not explain why that place was not indicated in the site plan. PW-2 Bahoran Singh further stated that when he opened fire on the dacoits, five dacoits were on the roof of Ram Dev and they sustained injuries and blood also fell on the roof of Ram Dev. However the I.O. admitted that he did not find even a drop of blood on the roof of house of Ram Dev. He admitted that the room shown by letter 'B' in the site plan had a window in the north. Bahoran Singh also admitted arrival of three constables from the out post and further stated that they remained present there till the next afternoon yet the name of Hori Lal was not disclosed to any one of them either by him or any other witness. None of those constables was examined as a witness before the trial Court. As already pointed out above this witness claimed to have seen the dacoits when they were on the roof of Ram Dev but he has not stated that Hori Lal had also climbed on the roof. He has also not stated, what weapon appellant Hori Lal was carrying and what role was played by him during the course of incident.

17. PW-7 Rajendra Singh has also named the appellant as one of the dacoits. The house of this witness was removed by 10-12 houses from the house of Ram Dev. He claimed to have identified the dacoits when they were running and at that time

this witness was present in front of the house of Yudhister. He stated that he was having a torch with him which he flashed on the dacoits and identified the appellant. However he admitted that he did not disclose the fact of his having a torch with him to Ram Dev before he lodged the report. This fact was also not told by him to Investigating Officer, though he claimed to have told this fact to the Investigating Officer but when his attention was drawn to him statement recorded under Section 161, Cr. P.C. wherein no such fact was mentioned, he could assign no reason for that omission. The I.O. admitted that this witness never told him that he was having a torch nor any torch was shown to him by this witness. Again this witness has not disclosed the weapon which the appellant was having at the time of dacoity.

18. From a close examination of the evidence of the aforesaid witnesses, it appears to be highly doubtful that these witnesses had sufficient opportunity to identify the appellant amongst the dacoits. The possibility of their nominating the accused on account of some enmity or under suspicion is not ruled out. Had the appellant been present who according to the witnesses was known to them from before the incident, as a natural corollary they would have further disclosed as to what weapon the appellant was having at the time of dacoity. It is also not specifically stated by any of the witnesses that appellant Hori Lal fired any shot either on the deceased or injured woman Smt. Chandrawati or towards any other witness. It also does not sound to reason that the appellant, who was a resident of a nearby place, hardly removed by half a kilometer, would have taken no precaution to conceal his identity while going to the house of the deceased with a gang of dacoits. We have already found above that there is a grave doubt, if the witnesses had sufficient opportunity to identify the appellant and the very fact that his name was not disclosed by any witness to the police constable, who as per the witnesses had arrived at the scene after the occurrence, the reasonable conclusion will be not to place implicit reliance on their testimony as far as it concerns the appellant.

19. The First Information Report in the present case does not appear to have been lodged promptly. The incident occurred at about 11 in the night and three police constables of a nearby out post had also arrived at the scene of occurrence within

two hours of the incident and as per PW-1 they stayed at his house throughout the night and when he went to lodge the report they were left behind at this house. The said police constables were also found present at the scene of occurrence when the First Informant came back with the police after lodging the FIR. When three police constables had arrived at the house of PW-1 in the night itself why FIR was made next morning is shrouded in mystery which gives rise to a suspicion that perhaps some consultation and confabulation were being made and the possibility of the appellant being named on account of the same cannot be ruled out. FIR in a criminal case plays a pivotal role for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, held by them as also the names of the witnesses if any. Delay in lodging FIR often results in embellishment, false implication, introduction of innocent persons in addition to or replacement of real assailants etc. On account of delay, the FIR of the present case has thus lost its intrinsic value as a corroborative piece of evidence.

20. The cumulative effect of the discussion of evidence on record is that it is not safe to hold the appellant guilty of the offence charged for and it would be just and proper that he be extended the benefit of doubt.

21. For the reasons stated above this appeal is allowed. The order of conviction and sentence passed by learned Additional Sessions Judge, Etah dated 20-5-1980 is set aside and the appellant is acquitted of the offences charged for. He is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.