

Hetram and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-29-2003

Reported in : 2004CriLJ3564

Judge : S.K. Agarwal and ;V.S. Bajpai, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 149 and 300

Appeal No. : Crl. Appeal Nos. 1311 with 1312 of 1980

Appellant : Hetram and ors.

Respondent : State of U.P.

Advocate for Def. : Rajeev Sharma, A.G.A.

Advocate for Pet/Ap. : J.N. Chaturvedi, ;A.B.L. Gaur, ;Pankaj Srivastava, ;Vaheeda Muneer and ;N.A. Muneer, Advs.

Disposition : Appeal allowed

Judgement :

1. Criminal Appeal No. 1311 of 1980 was filed by appellants Hetram, Bhagwan, Lok Pal, Tota Ram, Talebar Ramveer and Jagdish. The other Criminal Appeal No. 1312 of 1980 was filed by appellant Ajuddhi. Appellants Hetram, Ajuddhi, Bhagwan and Totaram were convicted under Sections 148, 307/149 and 302/149, IPC and sentenced to R.I. for 2 years, R.I. for 5 years and imprisonment for life

respectively. Appellants Lokpal, Talewar, Ramvir and Jagdish were convicted under Sections 147, 307/149 and 302/149, IPC and sentenced to R.I. for one year, R.I. for 5 years and imprisonment for life respectively.

2. Aggrieved by the said conviction, these appellants have preferred the aforesaid appeals in this Court.

3. The brief story of the prosecution, as laid in the F.I.R., is as under :

Bharat Singh, resident of village Dulha, claimed that he was suspected behind the arrest of Jayant, son of Genda, by the police under Section 25 of the Arms Act. As a consequence of that the appellants were nursing serious grouse against him. They were in the look out of his elimination as a consequence of the said suspicion and the animosity entertained by them. On the intervening night of 8/9-7-1979 at about 12.00 in the night while the two deceased and some others belonging to one family were asleep in the courtyard of their house, appellants Het Ram with a gun in his hand and Bhagwan with a country made pistol came on the roof of the shop of P.W. 3 Ramesh. Het Ram is said to have opened a warning fire from his gun, which awakened the deceased, the informant and others. The females also were attracted to the place from inside their house after the fire was made by one of the accused persons from the roof. Het Ram is said to have exhorted his companions that they had a golden opportunity, let Bharat Singh did not escape. In his F.I.R., P.W. 1 Bharat Singh further claimed that hearing the gunshot report he was awakened. He was at that time sleeping inside his house. He had seen the incident from a hole and he identified all the miscreants along with their weapons. Four known persons were having Lathis along with two or three wholly unknown persons. In the second limb of the prosecution case, as contained in the F.I.R., Het Ram is said to have opened solitary fire from the roof, which struck Bhoop Singh and the other shot was fired by Ajodhi from the ground upon the same person. From the F.I.R. it appears that the females of the house Shanti and Harpiyari came out from the house at this stage and not at the stage of first shot being fired from the roof by Het Ram. The assailants, on the alarm being passed by the villagers, took to their heels opening indiscriminate fires. The ladies sustained gunshot injuries as a consequence to that.

4. The F.I.R. of this incident was lodged at P.S. Nidhauri Kalan, District Etah, on 9-7-1979 at 7.30 a.m. by informant P.W. 1 Bharat Singh.
5. The injured persons were sent for their medical examination and were examined by P.W. 8 Dr. S. Nath. The injuries of these persons are on record and were also quoted in the trial Court judgment. Therefore, we are not reproducing them herein below in our judgment.
6. In the incident, apart from Bhoop Singh, Smt. Harpyari had also breathed her last. Smt. Harpyari died 12 days after the occurrence, i.e. on 21-7-1979. The cause of death was myocardial infarction of the heart. The damage to the heart, as noted under caption 'heart' in the post-mortem examination report, shows that Thrombosis occurred. The heart chambers were full of blood. In the consequence, from the evidence of the Doctor, who conducted her medical examination, and from her post-mortem examination report, we find it very difficult, rather impracticable, to hold that she died as a consequence of the injuries suffered by her in the incident occurred on the intervening night of 8/9-7-1979. The cause of death cannot be co-related in any manner with the injury suffered by her on her right leg. Underneath it, the bone was found fractured though.
7. The post-mortem examination report of Bhoop Singh does indicate that the injuries were suffered by him in a manner which could be caused from some height as well as from the ground. Some of the injuries have downward trend, whereas the other have parallel movement from one direction to the other, but in none of the injuries there was any blackening or tattooing. Two weapons, as suggested to have been used against the deceased, were a gun and a country made pistol.
8. From the facts available from the evidence of the eyewitness Ajuddhi, it seems to have been in close proximity with the deceased being on the ground, in the lane itself. Therefore there ought to be blackening.
9. The prosecution, in support of its case, has examined four eyewitnesses. They are P.W. 1 Bharat Singh, P.W. 2 Km. Gayatri, P.W. 3 Ramesh and P.W. 4 Bhudeo. So far as P.W. 2 Km. Gayatri is concerned, we are of the opinion that her

evidence does not throw much light upon the incident. From her evidence, according to her statement, it is evident that as soon as she suffered the pellet injuries, she ran towards north and simultaneously the miscreants, fled towards south. She, therefore, could have hardly any opportunity to see and recognise the accused persons.

10. The statements of P.Ws. 1, 3 and 4 are in identical terms. These three witnesses have detailed the entire version in one and the same breath. The bone of contention for the incident, according to the prosecution, i.e. the motive, was arrest of Jayant and the suspicion entertained by the assailants against Bharat Singh was his role in his arrest. Conspicuously, Bharat Singh's house ought to be the target of the assailants, the appellants. From the very outset Bharat Singh has tried to play smart, inasmuch as he had stated that at about 9.00 p.m., on account of apprehension, he withdrew himself, from amongst the injured persons, to his house and slept there. He was awakened by the report of the first shot fired by Hetram from the roof of Ramesh and thereafter witnessed the occurrence from a hole available somewhere in the door of his house. Later on, during cross-examination, this witness, having realised the difficulty, remodelled the version on this aspect to this extent that he had opened the door of his house partially and peeped through the gap between the two door leaves. So far as the joining hands of these appellants together in this incident is concerned, that aspect was detailed by this witness in the manner that all these appellants belong to one community, i.e. Gadaria. They were also friends and had good relations. According to his statement, as available from paragraphs 1, 2 and 3, the accused persons belong to three different families. Appellants Talebar, Tota Ram, Ramveer and Ajudhi belong to the family of Samley. Hetram, Lokpal and Sobharam belong to the family of Liladhar. The other set, i.e. Bhagwan and Jagdish, belong to the family of Punni. Apart from the fact, asserted in the case, that they were good friends and had good relations inter se, there is no other evidence to show any affinity between the three sets of the families. Their participation in the incident together, therefore, in our opinion, is not to be accepted, as alleged by the prosecution witnesses, especially P.W. 1 Bharat Singh.

11. The motive, in our opinion, is not established at all. Except P.W. 1, none of the witnesses have stated this fact in their evidence during trial. We are not inclined to place any implicit reliance on the lone testimony of P.W. 1 Bharat Singh without any corroborative evidence further on this aspect. Even the F.I.R. of this case was not brought on record. The I.O. of the case also not stated a word about the arrest in his deposition in Court. For the said reason we find that the motive has not, as earlier discussed, established at all by the prosecution.

12. Coming to the incident, we find two different versions before us. One set up by the prosecution, as earlier discussed, and the other by the defence that in number of houses of their community a dacoity was committed and these injured persons had suffered injuries in the, shootout made by the dacoits. When we test the prosecution evidence, there are hiccups in the story. The prosecution has failed to establish the motive. According to the prosecution story, the miscreants, who had come to eliminate Bharat Singh, opened fire in order to awaken them as well as make them conscious of their intentions. Such a story is difficult for us to assimilate and rely upon. The last event that weakens the prosecution story is that no attempt was made by the miscreants to raid the house of Bharat Singh. Even if we accept his version that he had shifted to his house at about 9.00 p.m. Yet another circumstance that creates serious dent in the prosecution story is sufferance of blunt object injuries by as many persons including the females on the side of the defence. The prosecution has tried to introduce an explanation at a very belated stage, i.e. during the trial. Upto the stage of investigation, right from the registration of the F.I.R. no such version was asserted or alleged. For the first time, during the trial, the prosecution has come out with this ingenious story that the miscreants were greeted with stones while they were fleeing from the spot. It was not alleged by any of the eyewitnesses that the females of the houses of these miscreants, who were their own villagers, also were seen at the spot amongst them or amongst the witnesses. Had they been there, in the manner as alleged by the prosecution, they would have also sustained some firearm injuries.

13. In the circumstances adverted to above, we find the prosecution story completely besmeared with untruth. Bharat Singh has concocted a case in order to rope in all his enemies and their acquaintances.

14. P. W. 3 Ramesh had suffered from paralysis when the occurrence took place. He was not able to run and, therefore, non-suffering of any injury on his part in the incident belies his presence at the spot of occurrence. We cannot place any reliance on his testimony. Had he been sleeping along with Bharat Singh and other injured, he could not have escaped unhurt.

15. So far as P. W. 4 Bhudeo is concerned, he is an interested witness. Though he has admitted the fact that in the incident of murder of Nathu, some 4 years ago, he was an accused. Bhagwan and Tota Ram were not witnesses against him. He was convicted and later on acquitted from this Court. He claimed that he was returning from village Pawaha all alone after taking food in a feast on a 13th day ceremony. But in his statement to the I. O. this fact was not revealed by him. He too did not suffer any injury though he was standing behind the pole near the house of Sone Kali and he came out from behind that pole only when the assailants had taken to their heels.

16. In the facts and circumstances, we are not ready to accept this witness also as an eyewitness of the incident. He appears to be a got up witness. His presence is highly doubtful being a wholly chance witness and the fact of his return from a feast not being told to I. O.

17. The defence case of robbers belabouring the villagers, male and female both, has some ring of truth in view of the discussion made above.

18. Before parting with the judgment, we feel it necessary also to state that the participation of 2/3 unknown persons in the incident also cast serious dent into the authenticity of the prosecution version. When assistance of some unknown persons is being resorted to participation of as many as 8-9 persons known to the families of the deceased and the informant is a highly doubtful factor.

19. In view of the above discussion, we are inclined to allow both these appeals. Accordingly these appeals are allowed. The appellants are acquitted of the charges for which they were convicted and sentenced. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties are hereby discharged.

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