

**State of U.P. Vs. Ram Kanth Alias Rama Kant and ors.**

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**Court :** Supreme Court of India

**Decided On :** Aug-08-2002

**Reported in :** JT2002(6)SC526

**Judge :** U.C. Banerjee and; B.N. Agrawal, JJ.

**Acts :** Criminal Law; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302;  
[Evidence Act, 1872](#) - Sections 3

**Appellant :** State of U.P.

**Respondent :** Ram Kanth Alias Rama Kant and ors.

**Disposition :** Appeal dismissed

**Judgement :**

ORDER

1. This appeal is directed against an order of acquittal passed by the High Court against the judgment and order of sessions judge, Mirzapur convicting the accused person, Ram Kanth @ Rama Kant, under Section 302 IPC and sentencing him for imprisonment for life. Three other persons were also charged with Sections 323 and 34 IPC and learned sessions judge while convicting them under Sections 323/34 IPC sentenced each of them to nine months rigorous imprisonment.

2. It has been the prosecution case that in the night between 16th and 17th March, 1977, Ram Bricha father of Jaishree and his brother Banwari and Marahu were sleeping in the 'Baithak' in front of the house. A lantern was burning in the 'Baithak' and at that point of time Ram Kanth @ Rama Kant, Ram Badan, Ram Murat and Ramdhani arrived at the spot. Before, however, any further action, they, said to have discussed among themselves that since Ram Bricha had purchased nine bighas land which the respondents herein wanted to purchase and since there is likelihood of the new purchaser installing a pump set, Ram Bricha should be killed. It is at this juncture, we have two separate versions as to the happenings of the events. Whereas the informant Jaishree records that when the father and brother raised an alarm, Jaishree and others sleeping in the adjacent room which stood about 25 paces away, also woke up on hearing the commotion and came out of the house. Along with Jaishree, Ram Sakha, Lurkhur and many others reached there. Jaishree along with all others present pleaded with the accused persons not to kill Ram Bricha but without paying any heed to the same, Ram Kanth @ Rama Kant did hit the father with a lohabanda lathi and the other three accused did beat his brothers Marahu and Banwari with lathis. After the incident, however, they went away towards the east. It is significant to note that Jaishree is the informant and the statement came out at the examination-in-chief.

3. The other version comes from PW 7 being the son who was said to be in the same room with the father, stated that when all of them were sleeping, the accused persons entered and Ram Kanth @ Rama Kant had stated that since the deceased was one who has purchased nine bighas field so kill him. This discussion amongst the assailants did take place inside the Baithak and on hearing this PW 7 woke up and thereafter saw Ram Kanth @ Rama Kant beating his father and when his father was beaten the latter was in sitting posture. Admittedly, the night on which the incident occurred was a dark night and all three of them were sleeping under their respective quilts or 'toshak' whatever it might be called. As regards the arrival of Jaishree PW 7's definite version is, as long as accused were inside the Baithak no one from outside came into it and it is only after few minutes after all the accused persons left, the other persons came in the Baithak. As a matter of fact, PW 7 went on, however, to add that after beating the father and two sons, the accused persons did run away and it is only then the two

brothers came and raised alarm and at that point of time Jaishree arrived but he was categorical that Jaishree could not have entered the Baithak and all 6-7 persons who came in to the Baithak, upon hearing the commotion, were waiting outside and came in together. It is this evidence which the High Court thought it prudent not to put reliance since stage by stage the prosecution went to improve its case from one to the other. The body was lying at Baithak having the injuries undoubtedly but issue is whether the assailants were the accused persons or there was mistaken identity. The High Court, upon consideration of the evidence on record did come to a conclusion that PW 2 (Jaishree) being the informant cannot be treated to be a trusted witness and as such the evidence tendered by the said PW 2 is not capable to have the support and acceptance.

4. As regards the evidence of PW 7, the High Court went on to record that there has ,been an improvement of the case from time to time. Significantly, though PW 7 was injured at the same time and place but PW 7 got himself medically examined on the next day only about 5.30 p.m. - a rather strange effort to have a medical treatment on being injured. The quilt which were supposed to be on the body of the persons concerned have also not been seized neither saw the light of the day. It is on this basis some suspicion cropped up in the mind of the High Court and we also do find some justification in regard thereto. The High Court on the basis of materials on record did not agree with the finding of the learned additional sessions judge and thus recorded a finding of acquittal.

5. The appeal, thus, fails and is dismissed. Their bail bonds shall stand discharged.

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