

Ram Babu Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-23-2010

Judge : Poonam Srivastav and; S.C. Agarwal, JJ.

Appellant : Ram Babu

Respondent : State of U.P.

Disposition : Appeal allowed

Judgement :

Poonam Srivastav, J.

1. Sri Rahul Mishra Advocate was appointed as Amicus Curiae by this Court on 28.1.2010. He appears on behalf of sole appellant who is in jail since March, 1999. Three accused were sent up to face trial in Session Trial No. 260 of 1999-Lakhan Singh son of Bhawani Singh, Ram Babu present appellant and Raj Bahadur, sons of Lakhan Singh, all resident of village Pehra, Police Station Baghwala, District Etah. Charges were framed against Lakhan Singh and Raj Bahadur under Section 302/34, 504 I.P.C. and against the present appellant Ram Babu under Sections 302, 504 I.P.C. Two accused Lakhan Singh and Raj Bahadur were given a judgment of acquittal. Ram Babu, present appellant was acquitted under Section 504 I.P.C. but convicted for an offence under Section 302 I.P.C. and sentenced to undergo life imprisonment and fine of Rs. 10,000/-. In default of payment of fine to undergo further imprisonment of six months, out of the fine realized, Rs. 9,000/-

was to be given to the sons and widow of the deceased Rameshwar Dayal.

2. The prosecution case proceeded on the basis of a written report lodged by Rasal Singh PW-1 on 2.3.1999 at 8.10 P.M. at Police Station Baghwala, District Etah situated at a distance of 9 kilometers from the place of incident. The occurrence is alleged to have taken place on the same day at 7.00 P.M. in front of house of Rasal Singh where a Chaupai was going on. Some altercation took place between Lakhan Singh, his son Raj Bahadur and appellant Ram Babu on one hand and Arun Kumar on the other. Deceased Rameshwar Dayal tried to intervene and stop the quarrel at his doorstep. Arun Kumar ran away. The appellant Ram Babu was asked by his father Lakhan Singh to fetch his gun, consequent thereon a single shot was fired from the said gun which caused injuries to Rameshwar Dayal. He was taken to Etah hospital from where he was referred to Agra. The injured died on way to the Agra Hospital.

3. Post mortem was performed by Dr. Brijesh Rathore PW-3 on 3.3.1999 at 1.00 P.M. According to Post Mortem Report Ext. Ka-2, probable time of death was about 1/2 day before the post mortem was performed and following ante-mortem injuries were found on the body of the deceased:

1. Multiple gun shot wounds of entry of the size of 0.5 Cm. x 0.5 Cm. x skin to cavity deep in an area of 18 Cms. X 16 Cms. on right side of cheek, neck and front of forehead. On dissection some holes were found on the temporal and parietal bones. Brain tissues were lacerated. Fresh and clotted blood inside cranial cavity was found. Direction right to left.

2. Multiple gunshot wounds of entry 0.5 Cm. x 0.5 Cm. x skin to muscle deep at outer side of right upper arm, shoulder and back. Direction right to left.

3. The appellant was arrested on 10.3.1999 at 10.30 P.M. by the then Investigating Officer from Tiraha Beri Jalalpur.

4. The prosecution examined six witnesses to substantiate case of the F.I.R. PW-1 Rasal Singh, first informant and PW-2 Ram Rahish are two eye witnesses of fact. PW-3 Dr. Brijesh Rathore performed autopsy on the dead body of the deceased

Rameshwar Dayal. PW-4 Vind Kumar, S.O. of Police Station Baghwala who took over investigation from the first Investigating Officer S.I. Indrajeet Singh and submitted charge sheet. PW-5 Constable Anis Ahamad had taken the dead body of the deceased after inquest for post mortem and PW-6 S.I. Indrajeet Singh is the first Investigating Officer who performed inquest proceedings.

5. Sri Rahul Mishra has advanced a number of arguments to eliminate evidence of the prosecution and the consequent judgment of conviction. The first argument is that F.I.R. is ante-timed. Secondly he has canvassed that medical evidence contradicts the ocular version as narrated by eye witnesses. Third argument is that place of incident is doubtful, fourth, independent witnesses have been withheld and unnatural conduct of the witnesses who have been examined by the prosecution and the time of occurrence has also been challenged. Besides, Sri Rahul Mishra has emphasized that there was no light and murder was committed at a different place by some unknown assailants. Last, but not the least, submission is that the appellant has been implicated falsely on account of enmity.

6. Learned Counsel while substantiating his argument that the F.I.R. came in existence not at the alleged time which the prosecution professes but at a later time referred to the first information report. The F.I.R. Ex. Ka-1 has been read out. Specific assertion is that though the time given in the F.I.R. is 6.00 P.M. whereas witnesses claimed the incident to have taken place at 7.00 P.M. Original chick report has been shown to us from the record that previously '6.00 P.M.' was mentioned which was later on changed to '7.00 P.M.' and overwriting in the original chick report has been demonstrated. Besides, he has pointed out that the F.I.R. itself mentions that the deceased was being taken to Agra for advanced treatment after he was referred by the doctor at Etah Hospital. The F.I.R. is alleged to have been lodged within one hour ten minutes of occurrence whereas admittedly Etah Hospital is situated 22 kilometers away from the place of occurrence. Thus time shown in the F.I.R. cannot be accepted.

7. Sri Rahul Mishra while placing statement of PW-1 Rasal Singh has laid emphasis where he has admitted that he came to know that the deceased Rameshwar Dayal was referred for Agra at about 10.00-11.00 P.M. and he died

while he was being taken to Agra. In the circumstances, the fact that the deceased was referred for Agra, could not be mentioned in the F.I.R. if it was written at the time alleged by the prosecution i.e. 8.10 P.M. Learned Counsel has also pointed out cross examination of PW-1, emphasis is on the assertion made by him though he claims in the F.I.R. that he himself had taken his son to Etah Hospital whereas in his statement he contradicts the same while admitting that the deceased was taken to the hospital by some villagers on a tractor which belong to one Bhagwan Das Fauji and he went to Etah Hospital only the next morning. These anomalies lead to the only inference that F.I.R. was lodged subsequent to the death of the deceased but the time mentioned is ante-timed and, therefore, the credibility of the First Information Report is doubtful, specially the time when it came in existence. It is difficult to place implicit faith on the F.I.R. in view of discrepancies noticed in the F.I.R. and statement of PW-1. We are not able to accept the prosecution on this aspect of the case.

8. In support of next argument, to substantiate that medical evidence does not corroborate ocular version, learned Counsel has laid emphasis on the ante-mortem injuries which are two in number on the right side of cheek, neck, head and front of forehead as well as on the right upper arm, shoulder and back. The submission is that these injuries can not be a result of single shot and from a distance claimed by the prosecution and shown in the site plan. The distance and manner of causing injuries does not support the prosecution version. Besides, according to post mortem report, probable time of death was 1/2 day before the post mortem was performed on the body of the deceased. The time of post mortem mentioned is 1.00 P.M. on 3.3.1999. This brings the time of death approximately 10.00-10.30 P.M. Stomach is full of unidentified semi digested food material, PW-3 Dr. Brijesh Rathore has admitted in his cross examination that the deceased had taken food within 2-2 1/2 hours of his death and also that two injuries on the body of the deceased could also be as a result of two shots. A close scrutiny of the documents and analysis on the basis of arguments of the learned Counsel, it is apparent that the injuries on the front and back side cannot be a result of single shot. The doctor has admitted that injuries could be a result of two shots besides, it is evident that death occurred much after 6.00 or 7.00 P.M. as claimed by the prosecution. The inevitable conclusion on the basis of the

statement of the doctor and post mortem report is that the eye witness account as claimed by the prosecution is not supported by medical evidence. The submission of the learned Counsel on behalf of the appellant appears to be justified.

9. The arguments in support of defence that the place of occurrence is doubtful, learned Counsel has tried to analyse and discard the prosecution evidence since no bloodstained earth was recovered from the alleged place of incident. The prosecution has not prepared any such recovery memo. Besides, theory that Chaupai was going on in front of house of the deceased as well as accused since both are neighbours, has been contradicted by witness himself. He has stated that about 20-25 people were going in a procession of Chaupai and occurrence took place when they reached at the door of Rameshwar Dayal, some altercation started with Arun Kumar which deceased tried to intervene. Site plan also belies the version of PW-1 regarding place of occurrence and also specific assertion by PW-1 as well as, also in the statement under Section 161 Cr.P.C. a clear admission that incident took place after sun set. The first informant has tried to elucidate in his statement and substantiate the actual place from where the firing took place but the injuries completely belies the said assertions and, therefore, it is evident that the incident took place somewhere else in darkness of night and since there were a number of persons bearing grudge against the deceased and had an axe to grind against him, the possibility that they were responsible for his death is a fact which should have been considered by the Sessions Judge. The fact that the dead body was taken to the hospital on a tractor of Bhagwan Das Fauji is also not acceptable for want of corroborative evidence since there were no recovery memo of the tractor or any blood found on the tractor or any cloth or mattress on which the deceased is said to have been taken to Etah Hospital. It is also argued that the prosecution has not examined Arun Kumar on account of whom the entire dispute started. This is yet another nail in the coffin of the prosecution case.

10. It is also submitted that brother of Arun Kumar Akkan had also arrived on the spot but he has also not been examined. The prosecution has also discharged Lalaram, Ram Naresh, Virendra and Raj Bahadur who were mentioned as prosecution witnesses but were subsequently discharged. Thus none of the independent witnesses even those who were related to the deceased, have come

forward to support the prosecution case.

11. Learned Counsel has placed some decisions of the Apex Court in support of his arguments. First decision relied upon by counsel is Balmiki Singh v. Ram Chander Singh and Ors. 2008 (63) ACC 132 (Supreme Court). This decision is in support of the argument that manner of injuries caused to the deceased is liable to be excluded since the injuries on the front side as well as on the back side cannot be as a result of single shot. The Apex Court agreed with the view adopted by the High Court while noting that the injuries did not support the prosecution theory. The next decision relied upon by counsel is State of Haryana v. Lakhbir Singh and Anr. 1990 (27) ACC 586 (SC). This decision is also in support of the argument that the evidence of the eye witnesses is that injuries were as a result of single shot whereas opinion of the doctor is that it can also be as a result of two separate and independent shots and since the opinion of the Medical Officer was based on injuries suffered by deceased and presence of semi digested food in the stomach of the deceased, therefore, conclusion arrived at by the High Court was considered to be correct.

12. In the instant case, it is almost and an identical circumstance. Learned Counsel has cited case of V. Sreedharan v. State of Kerala 1992 Scc (Cri) 952. Reliance has also been placed on a Division Bench decision of this Court in the case of Shiv Kumar and Ors. v. State 1985 All Cri R 75. This citation is to support the argument that if a standard gun is fired from a distance of 4 to 6 paces on the object, the dispersal of pellets to the extent of 15 cm. x 13 cm. in area is not probable and also that there would be no dispersal of pellets possible from a standard gun if the weapon is fired from a distance of one foot.

13. Learned A.G.A. Sri Shashi Kumar supporting the judgment of the learned Sessions Judge has not been able to advance any substantial argument to contradict the anomalies pointed by learned Counsel appearing on behalf of the accused. The inconsistency of the circumstances and statement of the witnesses as well as documentary evidence pointed out by learned Counsel could not be answered satisfactorily by the learned A.G.A.

14. We have examined the record and oral evidence and all the facts and circumstances. We are in agreement with the submissions made by the counsel on behalf of the appellant. The conviction recorded by the Sessions Judge can not be upheld.

15. We are of the considered view for the reasons discussed in the forgoing paragraphs that the prosecution has miserably failed to substantiate the prosecution case on the basis of evidence adduced. The judgment of conviction recorded by the learned Sessions Judge has no legs to stand. The judgment dated 4.7.2001 passed by the Sessions Judge, Etah in Session Trial No. 260 of 1999 is set at naught. The appeal is accordingly allowed. The appellant shall be set at liberty forthwith.

16. Let a copy of this judgment along with lower court record be sent to the Sessions Judge, Etah for compliance.

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