

**Bhagat Ram, Vs. the State**

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**Court :** Uttaranchal

**Decided On :** Feb-15-2010

**Judge :** Dharam Veer, J.

**Appellant :** Bhagat Ram, ;udai Ram And; Joga Ram

**Respondent :** The State

**Advocate for Pet/Ap. :** Sri. M.A. Khan

**Disposition :** Appeal dismissed

**Judgement :**

**Dharam Veer, J.**

1. This criminal appeal, preferred under Section 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 05.06.1995 passed by the Sessions Judge, Pithoragarh in Sessions Trial No. 45 of 1993 State v. Bhagat Ram and Ors., whereby the learned Sessions Judge has convicted the appellants/accused Bhagat Ram, Udai Ram and Joga Ram Under Section 304 (Part II) r/w Section 34 of The Indian Penal Code, 1860 (hereinafter to be referred as I.P.C.) and sentenced each of them to four years' rigorous imprisonment with fine of Rs. 2,000/- each and in default, to undergo further R.I. for a period of six months each. The appellants-accused were further been convicted Under Section 323 r/w Section 34 IPC and

each of them was sentenced to six months' R.I. with fine of Rs. 500/- each and in default to undergo further R.I. for one month each. All the sentences were directed to run concurrently.

2. In view of the death report of appellant No. 3-Joga Ram given by CJM Pithoragarh on 18.6.2009, the appeal filed by him already stood abated vide this Court's order dated 26.6.2009.

3. I have heard learned Counsel for the parties and perused the entire material available on record.

4. In brief, the prosecution case is that complainant Kaustuba Nand Bhatt (P.W.3) lodged an FIR stating therein that in the evening of 17.3.1992, his nephew Brijesh Kumar Pant along with Bhuvesh Pant (PW5), Kamlesh Pant (PW6), Bhuwan Chandra Pant (PW1) and Rakesh Pant had gone to the market of Berinag for the purposes of shopping on Holi occasion. At about 9 PM, the complainant was informed by Bhuvesh Pant that at about 8:45 PM when they reached on the way in front of the house of appellant-accused Udai Ram, the appellants-accused Bhagat Ram, Udai Ram and Joga Ram (now deceased) were hurling abuses to Sabhapati of the village in connection with construction of a latrine. When Bhuvesh Pant and his associates asked the appellants-accused not to abuse, on this the appellants-accused committed Marpit them with Lathis and pelted stones. The appellants-accused also beaten Brijesh Kumar with Lathis in the courtyard of former Pradhan where he was lying unconscious. On this, the complainant along with the other villagers went there and saw that Brijesh Kumar was lying unconscious. Soon thereafter, he was taken to the hospital where after some minutes he succumbed to his injuries. With the same averments, the FIR Ex.Ka-3 was lodged by P.W.3 Kaustuba Nand on 17.3.1992 at 10:55 PM at P.S. Berinag, Distt. Pithoragarh. On the basis of the FIR, Head Moharrir Harsh Singh prepared the Chik FIR of the case, i.e. Ex.Ka-8. The entry was also made in the G.D. by him, i.e. Ex.Ka-18. The investigation of this case was entrusted to P.W.8 S.O. Anand Singh Gusain. Thereafter, the inquest of dead body was prepared, the inquest report is Ex.Ka-9. Along with the inquest report, other necessary documents viz. sketch of dead body Ex.Ka-10; Police Form No. 33 Ex.Ka-11;

Police Form No. 13 Ex.Ka-12; letter sent to CMO by I.O. Ex.Ka-13 and specimen of seal Ex.Ka-14, were also been prepared. Autopsy on the dead body of Brijesh Kumar Pant was conducted on 18.3.1992 at 1:10 PM by P.W.7 Dr. B.S. Bisht and post-mortem report Ex.Ka-7 was prepared. Injured Bhuvesh Pant (PW5) was also medically been examined by P.W.4 Dr. Arvind Kumar Chaudhary on 18.3.1992 at 11 AM and injury report Ex.Ka-4 was prepared. Likewise injured Rakesh Kumar was also medically been examined by the same medical officer on the same day at 10:45 AM and injury report Ex.Ka-5 was prepared. Similarly, injured Kamlesh Kumar (PW6) was also been examined on the same day by the same medical officer at 11:10 AM and injury report Ex.Ka-6 was prepared. The I.O. also prepared the Fard for recovering the articles from the place of occurrence viz. sugar, wheat flour, potatoes and semolina scattered over there, i.e. Ex.Ka-1. The I.O. also got recovered the blood stained clothes of the injured Kamlesh Pant and prepared a Fard, i.e. Ex.Ka-2. The I.O. also prepared the site plan of the place of occurrence i.e. Ex.Ka-15. He also prepared the site plan of the place where the deceased Brijesh was said to be fallen down, i.e. Ex.Ka-16. The I.O. during investigation recorded the statements of witnesses and after completing the investigation, submitted the charge sheet against the appellant/accused in the court, i.e. Ex.Ka-17.

5. After receiving the charge sheet, learned CJM, Pithoragarh committed the case to the court of Sessions on 20.12.1993 after giving necessary copies to the appellants/accused as provided under Section 207 Cr.P.C.

6. On 17.2.1994, the learned Sessions Judge, Pithoragarh has framed the charges against the appellants/accused Bhagat Ram, Uday Ram and Joga Ram (now deceased) Under Section 302/34 IPC and Under Section 307/34 IPC. The charges were read over and explained to appellants/accused, who pleaded not guilty and claimed to be tried.

7. To prove its case, the prosecution has examined P.W.1 Bhuwan Chandra, eyewitness, P.W.2 Naveen Chandra who proved the Fard Ex.Ka-1 and Ka-2, P.W.3 Kaustuba Nand, complainant, P.W.4 Dr. Arvind Kumar, who medically examined the injured, P.W.5 Bhuvesh Chandra, injured witness, P.W.6 Kamlesh

Kumar, injured witness, P.W.7 Dr. B.S. Bisht, who conducted the post-mortem and P.W.8 S.O. Anand Singh Gusain, IO of the case.

8. After that the statement of the appellants/accused was recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against them and stated that they have been falsely implicated. However, they did not produce any oral or documentary evidence in defence.

9. After hearing learned Counsel for the parties and appreciating the entire material available on record, the learned Sessions Judge, Pithoragarh vide judgment and order dated 05.06.1995 convicted and sentenced the appellants/accused as above discussed. Feeling aggrieved by the aforesaid judgment and order, the accused/appellants have preferred the present appeal.

10. Before further discussion, it is pertinent to mention the ante-mortem injuries recorded in the post-mortem report of deceased Brijesh Kumar Pant whose post-mortem was conducted on 18.3.1992 at 1:10 PM by P.W.7 Dr. B.S. Bisht, which are as under:

1. Swelling around left Pinna of ear.
2. Abrasion on left forearm near right elbow.
3. Swelling over right side of chest near costal region.

Cause of death was shown as shock and hemorrhage as a result of blunt injury abdomen. (Rupture of Liver, tear of mesenteric cutting)

11. To prove the above-said report, the prosecution has examined P.W.7 Dr. B.S. Bisht who has proved the post-mortem report Ex.Ka-7 prepared by him. He has stated that the deceased Brijesh Kumar could have died on 17.3.1992 at about 8:45 PM on being injured by Lathis and stones. He further stated the injuries were sufficient to cause death.

12. The injured Bhuvesh Pant was medically been examined on 18.3.1992 at 11 AM by P.W.4 Dr. Arvind Kumar Chaudhary, who in the injury report (Ex.Ka-4)

recorded the following injuries:

1. Tenderness over left elbow joint in an area of 2 cm x 2 cm. No other external sign of injury.
2. Tenderness over lateral aspect of left knee joint in an area of 3 cm x 2 cm. No other external sign of injury.

Inference-There are no other external sign of injury except tenderness in the case of both injuries. Type, cause and duration of both injuries cannot be ascertained on the basis of external appearance.

13. The injured Rakesh Kumar was also medically been examined on 18.3.1992 at 10:45 AM by P.W.4 Dr. Arvind Kumar Chaudhary, who in the injury report (Ex.Ka-5) recorded the following injuries:

1. Tenderness over right shoulder on posterior aspect in an area of 7 cm x 6 cm. No other external sign of injury.
2. Tenderness on the right side of back in an area of 7 cm x 4 cm.

Inference in injury 1 and 2, there is only local tenderness and they have no external sign of injury except tenderness. Type, cause and duration of injury 1 and 2 cannot be ascertained on the basis of external appearance.

14. Similarly, the injured Kamlesh Kumar (Ex.Ka-6) was also medically been examined on 18.3.1992 at 11:10 AM by the same P.W.4 Dr. Arvind Kumar Chaudhary, who in the injury report (Ex.Ka-6) recorded the following injuries:

1. A lacerated wound 2.5 cm x 0.5 cm x fascia deep on the posterior aspect of head and joint lateral to midline on right side situated 7 cm away from occipital tuberosity, reddish brown clotted blood deposited around the wound and edges of wound swollen.
2. Abraded contusion 3 cm x 1 cm situated 3 cm away from angle of mouth on left cheek.

3. Tenderness in an area of 4 cm x 3 cm on the lateral aspect of right arm, center of this area lies 9 cm below right shoulder joint.

Inference-Injury No. 1 and 2 are simple in nature, caused by blunt object and 12-18 hours in duration. In the case of injury No. 3 there are no external signs of injury except tenderness.

15. To prove the above-said injury reports, the prosecution has examined P.W.4 Dr. Arvind Kumar Chaudhary who has proved the injury reports Ex.Ka-4 of Bhuvesh Pant, Ka-5 of Rakesh Kumar and Ka-6 of Kamlesh Kumar respectively.

16. To further prove its case the prosecution has examined P.W.5 Bhuvesh Chandra Pant who stated that the appellants-accused Joga Ram (now deceased), Bhagat Ram and Udai Ram were known to him, who were the resident of his village. On the date of incident at about 7 PM, he along with Rakesh Pant, Kamlesh Pant, Bhuwan Chandra and Brijesh Pant had gone to the market to purchase the goods for the Holi festival. On reaching back from the market near the house of the appellant-accused Udai Ram, the appellants-accused were hurling filthy abuses to the Sabhapati of the village for non-construction of Latrine. He and his companions asked the appellants-accused not to abuse on which all the appellants-accused starting abusing them. The appellants-accused Bhagat Ram and Udai Ram, who were armed with Lathis, attacked upon them. He along with Rakesh Pant and Brijesh Pant received the injuries of Lathis caused by the appellants-accused. When he and his companions ran from there then the appellant-accused Joga Ram (now died) pelted stones which hit on the head of his elder brother Kamlesh. He along with his companions ran for rescue. Brijesh Pant also sustained injuries as a result of assault by the appellants-accused and resultantly he fell in the courtyard of Ishwari Datt Pant. The appellants-accused also arrived there and the appellants-accused Udai Ram and Bhagat Ram assaulted Brijesh Pant with Lathis, as a result of which Brijesh Pant became unconscious. It was a moon-lit night and in the verandah of Ishwari Datt Pant, electric bulbs were also providing light. After that he and Rakesh went in the village and also informed about the entire incident to Kaustubanand (PW3). After that all the family members went in the courtyard where Brijesh was lying unconscious.

Soon thereafter he was taken to Berinag Hospital where after 3-4 minutes, the doctor declared him dead. He also stated that the articles brought by them was also scattered at that place. On 18.3.1992 he was also medically been examined at Berinag Hospital. This witness was cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is reliable and believable.

17. The statement of P.W.5 Bhuvesh Chandra Pant gets full corroboration from the evidence of P.W.1 Bhuwan Chandra Pant and P.W.6 Kamlesh Kumar (injured eyewitness).

18. P.W.2 Naveen Chandra Pant has stated that on 17.3.1992 he received information at about 7 PM that Brijesh Kumar has been murdered by the appellantsaccused Udai Ram, Bhagat Ram and Joga Ram (now died). On this he also went on the place of occurrence where Brijesh was lying unconscious. From there Brijesh was taken to the hospital where the doctor declared him dead. On the next day i.e. 18.3.1992 the inquest report of Brijesh Kumar was prepared and he was appointed as a Panch. The police also recovered the scattered articles lying on the spot and prepared Fard, i.e. Ex.Ka-1. The police also prepared the Fard for recovering the blood stained clothes of injured Kamlesh Pant worn by him at the time of incident, i.e. Ex.Ka-2.

19. P.W.3 Kaustubanand is the complainant of the case, who too has corroborated the evidence of P.W.5 Bhuvesh Chandra Pant in toto. He also proved the report lodged by him i.e. Ex.Ka-3.

20. P.W.8 is S.O. Anand Singh Gusain, IO of the case, who stated that on the basis of report Ex.Ka-3 lodged by Kaustubanand Pant, H.M. Harsh Singh prepared Chik report i.e. Ex.Ka-8. Entry was also made in the G.D., copy of which is on record. He also conducted the inquest and prepared inquest report, i.e. Ex.Ka-9. He also prepared the sketch of dead body Ex.Ka-10, letter regarding the post-mortem i.e. Ex.Ka-11 and Challan Lash i.e. Ex.Ka-12, letter sent to CMO for conducting the post-mortem Ex.Ka-13 and specimen of seal i.e. Ex.Ka-14. He also prepared the site plan of the place of occurrence i.e. Ex.Ka-15 as well as the site plan of the place where the deceased said to be fallen down i.e. Ex.Ka-16. He also

recovered the bloodstained clothes of injured Kamlesh Pant and prepared Fard, i.e. Ex.Ka-2. During investigation he recorded the statements of witnesses and on completing the investigation, he filed the charge sheet against the accused, i.e. Ex.Ka-17.

21. After that the statement of the appellants/accused was recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to each of them in question form, who denied the allegations made against them and stated that they have been falsely implicated due to enmity. However, they did not produce any oral or documentary evidence in defence.

22. Sri M.A. Khan, learned Counsel for the appellants-accused argued that the prosecution could not prove its case against the appellants-accused beyond reasonable doubt. I do not find any force in this argument for the reason that P.W.5 Bhuvesh Pant has stated that the appellants-accused Joga Ram (now deceased), Bhagat Ram and Udai Ram were known to him, who were the resident of his village. On the date of incident i.e. on 17.3.1992 at about 7 PM, he along with Rakesh Pant, Kamlesh Pant, Bhuwan Chandra and Brijesh Pant had gone to the market to purchase the goods for the Holi festival. On reaching back from the market near the house of the appellantaccused Udai Ram, the appellants-accused were hurling filthy abuses to the Sabhapati of the village for non-construction of Latrine. He and his companions asked the appellants-accused not to abuse on which all the appellants-accused starting abusing them. The appellants-accused Bhagat Ram and Udai Ram, who were armed with Lathis, attacked upon them. He along with Rakesh Pant and Brijesh Pant received the injuries of Lathis caused by the appellants-accused. When he and his companions ran from there then the appellant-accused Joga Ram (now died) pelted stones which hit on the head of his elder brother Kamlesh. He along with his companions ran for rescue. Brijesh Pant also sustained injuries as a result of assault by the appellants-accused and resultantly he fell in the courtyard of Ishwari Datt Pant. The appellants-accused also arrived there and the appellants-accused Udai Ram and Bhagat Ram assaulted Brijesh Pant with Lathis, as a result of which Brijesh Pant became unconscious. It was a moonlit night and in the verandah of Ishwari Datt Pant, electric bulbs were also providing light. After that he and Rakesh went in the

village and also informed about the entire incident to Kaustubanand. After that all the family members went in the courtyard where Brijesh was lying unconscious. Soon thereafter he was taken to Berinag Hospital where after 3-4 minutes, the doctor declared him dead. The evidence of this witness is reliable and believable and gets full corroboration from the oral evidence of P.W.1 Bhuwan Chandra Pant, P.W.3 Kaustubanand Pant and P.W.6 Kamlesh Kumar. The evidence of P.W.5 Bhuwan Chandra Pant also gets corroboration from the medical evidence. P.W.7 Dr. B.S. Bisht, who conducted the post-mortem on the dead body of Brijesh Kumar has stated that the deceased could have died on 17.3.1992 at about 8:45 PM on being injured by Lathis and stones. He further stated those ante-mortem injuries were sufficient to cause death of the deceased. Besides this, he along with Rakesh Kumar and Kamlesh Kumar, who were also got injured in the above-said incident, were also medically been examined by P.W.4 Dr. Arvind Kumar. Therefore, the medical evidence of P.W.7 Dr. B.S. Bisht and that of P.W.4 Dr. Arvind Kumar as well as the post-mortem report Ex.Ka-7 and injury reports Ex.Ka-4 of Bhuvesh Pant, Ex.Ka-5 of Rakesh Kumar and Ex.Ka-6 of Kamlesh Kumar also prove the prosecution case to the hilt. As such, the offence punishable Under Section 304 (Part II) r/w Section 34 IPC and the offence Under Section 323 IPC r/w Section 34 IPC is clearly made out against the appellants-accused beyond any reasonable doubt and the trial court has rightly convicted and sentenced them as discussed above and there is no ground to interfere with the judgment and order passed by the trial court.

23. No other point was pressed.

24. For the reasons as recorded above, the appeal, being devoid of merits, is dismissed. The judgment and order dated 5.6.1995 passed by the Sessions Judge, Pithoragarh in S.T. No. 45/1993 State v. Bhagat Ram and Ors. convicting and sentencing the appellants-accused as discussed above, is hereby affirmed.

25. Let the record of the case be sent back for compliance forthwith. At the cost of repetition, it is stated that the appeal filed by the appellant No. 3-Joga Ram already stood abated vide this Court's order dated 26.6.2009 in view of his death.