
(2004) 12 AHC CK 0025

Allahabad High Court

Case No: Criminal Appeal No. 85 of 1981

Ram Babi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 17, 2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Penal Code, 1860 (IPC) â€” Section 147, 302

Citation: (2004) 12 AHC CK 0025

Hon'ble Judges: M.C. Jain, J; K.K. Misra, J

Bench: Division Bench

Advocate: Jagdish Singh Sengar, B.N. Tewari, H.P. Singh and Brijendra Singh, for the Appellant; R.S. Yadav, K.P. Shukla and A.K. Verma and A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

K.K. Misra, J.

This criminal appeal has been filed against the judgment and order dated 16.12.1980 passed by Shri S.K. Agnihotri, the

then VI Additional Sessions Judge. Aligarh in Sessions Trial No. 178 of 1980 whereby the accused appellant Ram Babu has been convicted under

Sections 302 and 147 IPC and sentenced to undergo rigorous imprisonment for life and one year"s R.I. respectively. Both the sentences were

directed to run concurrently.

2. This appeal was listed on several dates. When it was lastly listed on 14.7.2004, none turned up for the accused appellant though on record he is

represented by S/Sri J.S. Sengar, B.N. Tewari, H.P. Singh and Brijendra Singh, Advocates. It was then ordered that the appeal would be decided

in accordance with the law laid down by the Apex Court in the case of Bani Singh and others Vs. State of U.P., . The appeal was then listed for

hearing on 3.8.2004. On 3.8.2004 also none turned up to argue the appeal for the appellant though the list was revised. Under these

circumstances, we are deciding the appeal on merits after having heard the learned A.G.A. Sri K.P. Shukla with the Scrutiny of the record.

3. The prosecution version as contained in the F.I.R. lodged by Onkar Singh P.W. 1 son of the deceased was that the deceased Ram Singh had

purchased 32 Bighas of land of one Malkhan Singh, situate in village Kakorhi which was recorded in the name of the mother of Malkhan Singh.

The remaining 28 Bighas of land of Malkhan Singh was also being cultivated by the deceased Ram Singh in lieu of loan given by him to Malkhan

Singh. The accused Ram Babu, son of Gajadhar, resident of village Satpur, is the brother-in-law of the said Malkhan Singh. Accused Ram Babu

himself wanted the price of 28 Bighas land. There had been exchange of hot words between Ram Singh and Ram Babu. In the night intervening

between 25th / 26th December 1979, at about 12.0" clock in the night, the accused Ram Babu along with five or six others armed with guns and

axe came at the house of the complainant and caught hold of Ram Singh and asked about the complainant Onkar Singh. Whereabouts of the

complainant were not disclosed to the accused by Ram Singh whereupon accused Ram Babu gave out that Ram Singh should be done to death

and his son would be seen later on. Thereafter, the accused took diesel from the drum of the complainant and sprinkled the same on Ram Singh

and set him on fire. On the alarm raised by him, the complainant and other witnesses including Dambar Singh Pradhan PW 2, Chandrapal Singh

and Harnam Singh PW 3 reached the place of occurrence whereupon the accused persons ran away from the spot leaving behind Ram Singh

badly injured. The F.I.R. of the incident Ex.Ka.1 was lodged by Onkar Singh on 26.12.1979 at 4-55 A.M.

4. The deceased was medically examined on 26.12.1979 at 4.15 A.M. in the night by PW 6 Dr. R.C. Gulati on being brought by Onkar Singh.

The deceased had 60-70% burn injuries and was advised to be shifted to S.N. Hospital. Agra where he was kept under treatment for some time,

but died there on 8.1.1980. The post mortem examination was conducted by Dr. D.N. Tripathi PW 7 on 8.1.1980 at 4.10 P.M. The doctor

found the deceased aged about 55 years and 7-8 hours and passed since he died. He found the following ante mortem injuries on the dead body

of Ram Singh.

1. Burn injuries on the whole of the body including both sides of the left hand and on the right hand as well except for the portion of right hand

which had been amputated, on the right shoulder, at the abdomen in the front and lower part, at both the legs and on the whole of the back. All the

burn injuries had turned septic.

5. On internal examination, the brain was found congested. Both the lungs were heavy and congested and were found full of pus. He proved the

post-mortem report Ex.Ka.11.

6. The Doctor opined that the death occurred due to septicaemia as a result of burn injuries.

7. The accused appellants in their statement recorded u/s 313 Cr.P.C. denied the prosecution story and further stated that he had been falsely

implicated in the case.

8. In support of prosecution case, in all seven witnesses were examined. PW 1 Onkar Singh is the son of the deceased and the maker of the F.I.R.

PW 2 is Dambar Singh, Pradhan of the village. PW 3 is Harnam Singh. These three are the eyewitnesses who are alleged to have seen the

incident. PW 4 Ram Charan Singh Head Moharrir at P.S. Hathras prepared the chik report, Ex.Ka.2 on the basis of FIR of Onkar Singh. PW5

S.I. Dhiraj Singh investigated the case. He prepared the site-plan of the place of occurrence and recorded the statements of the witnesses. PW 6

Dr. R.C. Gulati was posted as Medical Officer in Civil Hospital, Hathras on 26.12.1979 and had initially examined the injuries of Ram Singh. PW

7 Dr. D.N. Tripathi conducted the post mortem examination as related earlier.

9. The trial court found the case setup against the accused appellant to be truthful and convicted and sentenced him as above.

10. A reference may here be made of the eyewitness account. PW 1 Onkar Singh who is the son of the deceased deposed that on the date of

incident in the night at about 12.O'clock he was present in the village at a place situate at a distance of four or five houses after his house. He

heard alarm being raised from the side of his house and people of the village also stated running here and there shouting that dacoity was being

committed at the house of Ram Singh (father of this witness) Hearing this, he along with certain others rushed to his house and when he reached

near his house (place of occurrence), he saw the miscreants coming out of his house and running away. He flashed his torch and recognized

accused Ram Babu amongst the other miscreants who had come out of his house. Chandrapal Singh, P.W.2 Dambar Singh, P.W.3 Harnam Singh

etc. were also present with him at that hour and place. About five or six miscreants had come out of his house, but he could identify only one out of

them, namely, accused Ram Babu, whom he knew from before. According to him, the miscreants had guns and axe. Thereafter, he went inside his

house and found that his father had sustained burn injuries and his family members had extinguished the fire on his person by putting water over

him. His father was badly burnt and he put his father on the cot. He gave previous background also that Malkhan Singh of village Kakorihi had 30

or 32 Bighas of land recorded in the name of his mother which was purchased by his father deceased Ram Singh through a sale deed and the

remaining land of Malkhan Singh was also in the possession of his father in lieu of debt taken by Malkhan Singh. Accused Ram Babu is the

brother-in-law of said Malkhan Singh. No dispute between his father, Ram Babu and Malkhan Singh had taken place over that land. The accused

had burnt his own writing, which is Ex.Ka.1. He had first brought his father to Hatharas for treatment. He was taken to Agra where he died in the

hospital later on.

11. PW 2 Dambar Singh has supported the version given by P.W. 1 Onkar Singh in the F.I.R and that made in court. He further deposed that he

had been Pradhan of the village for the last 22 years. In the night in question, he had participated in "Kirtan" held at the house of Smt. Harbheji and

from there, he came to his house and retired to sleep. When he got up to urinate, he heard alarm that fire had been set at the house of Ram Singh

and he was being assaulted. Hearing the alarm, he rushed to the spot and stood in between the houses of Chandrapal and Ram Singh where

P.W.1 Onkar Singh, P.W.3 Harnam Singh and Chandrapal Singh had also reached. Ram Singh had also raised alarm from his Haveli that

miscreants were assaulting him and setting him to fire. He himself also raised alarm. He and others with him including Onkar Singh and Chandrapal

Singh had torches which they flashed towards the place of incident. In the light of torches, he saw the miscreants who came out of the house of

Ram Singh after opening its main gate and ran towards the jungle in the north. In the torchlight, he could only identify accused Ram Babu and had

also seen the features of others. After the departure of the miscreants, he went inside the house of Ram Singh and found Ram Singh burnt. The

inmates of the house poured water over him and thus extinguished the fire on his person. On being questioned, Ram Singh told him that the

miscreants asked his son and when he told the miscreants that his son was in the "Kirtan", accused Ram Babu that he (Ram Singh) should be set to

fire after sprinkling oil on him.

12. PW 3 Harnam Singh named in the FIR has also supported PW 1 Onkar Singh and PW 2 Dambar Singh in material particulars. His house was

situate at a distance of 150 paces from the house of Ram Singh. He awoke on hearing alarm and rushed up with torch. He stood near the house

of Chandrapal where Dambar Singh Pradhan, Onkar Singh, Chandrapal Singh etc. had also reached. Thereafter, he saw six or seven miscreants

coming out of the house of Ram Singh who ran away towards north after coming out of main door of the house of Ram Singh. In the torchlight, he

could identify. After the departure of the miscreants, when he went to the roof of the house of Ram Singh, he found Ram Singh burnt. The fire on

his person had been extinguished by his family members by throwing water on him.

13. After going through the evidence of the three eyewitnesses, we find that they have given coherent and consistent account of the incident. They

all have deposed that after hearing the alarm being raised from the house of Ram Singh deceased, they went towards the place of occurrence and

found that 5-6 miscreants were coming out of the house of Ram Singh. Out of those miscreants, the witnesses recognized the accused Ram Babu.

They also deposed that they had torches with them and recognized the accused Ram Babu among other assailants in the torchlight. It has been

deposed by the three eyewitnesses of the case that the accused Ram Babu was known to all of them from before the occurrence. Hence, it was

not difficult for them to recognize him. In the light of the torches the known person could be identified easily. The statement of the eyewitnesses to

this effect appears to be trustworthy. Thus, we find that all the three eyewitnesses have given a consistent version of the incident corroborating each

other. The three eyewitnesses had absolutely no reason to falsely implicate the accused-appellant. The defence could not show that any of the

witnesses had any animus against the accused-appellant. Except PW 1 Onkar Singh two other eyewitnesses, namely, PW 2 Dambar Singh and

PW3 Harnam Singh are absolutely independent witnesses. Although PW1 Onkar Singh is the son of the deceased Ram Singh but from the

perusal of his evidence, we find his evidence to be truthful and reliable. A close relative of the victim is not always interested witness and his

evidence is also reliable and can be acted upon if there are other independent witnesses on record. In the instant case all the eyewitnesses have

given a consistent version of the incident. They are trustworthy and corroborative of each other.

14. We also find that the evidence of the eyewitnesses is trustworthy and reliable. Not only there is consistency in their evidence but that is also

consistent with the medical evidence. There is no discrepancy between the medical evidence and the eyewitness account of the incident. The

deceased had sustained extensive burn injuries, which corroborate the version given by the eyewitnesses.

15. The motive for committing the crime in question can also very well be scented. The deceased had purchased 32 Bighas of land of the mother

of Malkhan Singh and was in possession of other 28 Bighas of land of Malkhan Singh in lieu of the long given by him to Malkhan Singh. Motive is

hidden in the heart of a man. Accused Ram Babu who is brother-in-law of Malkhan Singh, did not like this and he himself wanted to be benefited

of the said land of Malkhan Singh. Thus, it was the greed for holding property, which prompted the accused to commit the crime. Motive apart,

there is clear, direct, independent and convincing evidence of the commission of this crime by the accused with his 5-6 other associates.

16. There are other facts also which make the prosecution story trustworthy. The occurrence had taken place at about 12 O" clock in the night.

The distance of the place of occurrence from the police station was about four kilometers. The report of the occurrence was lodged at 4.55 A.M.

and the victim had been admitted in the hospital at 4.15 A.M., meaning thereby that the injured had reached the hospital sometime before 4.15

A.M. Since the injured was in precarious condition and medical aid was required for him at the earliest possible, it was natural for the complainant

to have first taken the deceased in the Hospital. The complainant took him to the hospital first before lodging the report of occurrence with the

local police. It was quite a natural conduct on the part of the complainant and there was absolutely no delay in making the report of the occurrence.

17. After considering the evidence of the case alongwith the circumstances, we come to the conclusion that the participation of the accused in the

occurrence is fully established. The statements of PWs 1 to 3 clearly prove that they had identified the accused Ram Babu among the offenders in

the occurrence and in the manner stated by them. The complicity of the accused in the occurrence, is, therefore, well proved and there could be no

doubt on the point regarding his participation in the occurrence alongwith his other 5-6 associates. The deceased Ram Singh was set to fire after

sprinkling diesel over him due to which he received extensive burn injuries and died of the same.

18. In the result, the appeal fails and is dismissed. The appellant Ram Babu is on bail. The CJM concerned shall cause him to be arrested and

lodged in jail to serve out the sentences as imposed by the lower court. The compliance be reported within two months.

19. Certify the judgement to lower court.