

**(1993) 02 AHC CK 0083****Allahabad High Court****Case No:** Criminal Appeal No"s. 751 and 778 of 1979

Ragghu and Others

APPELLANT

Vs

State

RESPONDENT

**Date of Decision:** Feb. 10, 1993**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 162, 164
- Penal Code, 1860 (IPC) - Section 143, 147, 149, 302, 307

**Citation:** (1993) 17 ACR 147**Hon'ble Judges:** V.P. Goel, J; K. Narayan, J**Bench:** Division Bench**Advocate:** P.N. Misra, for the Appellant;**Final Decision:** Dismissed**Judgement**

K. Narayan, J.

These are two appeals directed against the conviction and sentence rendered by IIIrd Additional District and Sessions Judge, Budaun in S.T. No. 167 of 1978. By Judgment dated 20-2-1979, Appellants-Ragghu, Jaggu, Dharam Singh. Jaipal, Shree Pal. Gajju, Ram Charan, Atar Singh and Shiam Pal were all convicted and sentenced to life imprisonment u/s 302/149 IPC and to 7 years R.I. u/s 307/149 IPC. Accused Ragghu, Dharam Singh. Atar Slush and Shiam Pal were further convicted u/s 143 IPC and sentenced to undergo R. I for two years each and the remaining accused, namely, jaggu, Jaipal, Shree Pal, Gajju & Ram Charan were held guilty u/s 147 IPC and sentenced to one year R.I each. The sentences were made concurrent. Aggrieved by their conviction and sentence both, they have come up in appeal.

2. The charges under the above sections related to an occurrence of about 8.30 a.m. an 11-10-1977 wherein two persons, namely, Ram Swamp and his son Girwar were murdered and Smt. Long shri, wife of Ram Swarup and mother of Girwar was injured. The occurrence was said to be in two parts, i.e., first near the Persian wheel

where Ram Swarup, Smt. Longshri and their son Rishipal were irrigating their fields. From there the same accused persons are said to have chased Rishipal after killing Ram Swarup and at a different place, towards north-east of his house, Girwar was done to death in another field.

3. An FIR of this occurrence is said to have been lodged at P.S. Hajratpur, the distance of about 11 K.M., at 12.15 P.M. the same day. All the accused Appellants were named therein. After necessary investigation which shall be considered in detail, a chargesheet was submitted and lateron the accused persons were tried with the result mentioned above.

4. Before proceedings with the material facts relating to the present occurrence itself, a little earlier history, which has been relied upon as a motive for the murder, may be narrated. Accused Jaggu, & Ragghu are real brothers and Dharam Singh is the son of their third brother, namely, Anokhey. One more person, namely, Sipittar, who was also named in the FIR but died before the frame of charges, was said to be their agnate, if not a close cousin. Accused Jai Pal and Shreepal were also said to be agnates of Jaggu and Ragghu. The other accused Ram Charan, Atar Singh, Shiam Pal Singh and Gajju came from different villages and no specific allegation of motive was forthcoming. We are alive to the principle that motive is not always a material piece of evidence but since in this case, want of it in the matter of Ram Charan, Atar Singh. Shiam Pal Singh and Gajju has been relied upon by the Appellants, it has to be mentioned here and be taken up in detail below.

5. The facts constituting the motive are also multifaced in this case. Apart from other evidence, it can be said that there have been a lot of bad blood between the two families, that is, of accused Appellants Ragghu, Jaggu and others on one hand and Ram Swarup deceased in this case on the other. An FIR was lodged on 24-4-1974 by one constable Ram Swarup conveying that Km. Omana daughter of Ram Swarup was attempted for murder or assault by Jaggu and three others, who are not accused here. Soon after it, on, 24-4-1974. Ram Swarup deceased had lodged another FIR against Sipittar, since dead, and Jaggu accused along with two others, who are not accused here. This was an FIR u/s 302 IPC and Budhpal, a son of Ram Swarup had been murdered. It was shown in evidence that Jaggu and others were convicted for this murder of Budhpal and were on bial during the pendency of the appeal at the time of the occurrence of October, 1977. This FIR of 28-4-1974 also conveyed that one Jwala, a nephew of Ram Swarup, had been murdered earlier by Jaggu, Sipittar and others, for which Jaggu was sentenced to death, which was commuted by the President of India to life imprisonment and they were released after some imprisonment. The reasons for this sort of behavior have not been shown even in evidence and unfortunately or may be in better wisdom defence bas also remained silent in this behalf both during the cress-examination as well as in their statements be it whatever It may, one aspect is quite clear that the family of Ram Swarup deceased and descendants of Pemi father of Jaggu are not happy with

each other.

6. The occurrence in question is said to be to the firm that Ram Swarup, Smt. Longshri wife of Ram Swarup and their son Rishipal were irrigating their fields from the persian wheel of Malkhan when at about 8.30 a.m. Jaggu armed with Bhala, his brother Ragghu armed with Ballam, nephew Dharam Singh armed with Bhala and Sipitter, Jai Pal Shree Pal armed with cudgels, Atar Singh, and Shiam Pal Singh armed with guns and one Gajiu and Ram Charan armed with Lathis arrived there. Jaggu exhorted in the form "he is a great litigant and the sale should be put to an end today" they all surrounded Ram Swarup and began to injure him with their Bhala, Bullams, and Lathis. Smt Longshri rushed to save her husband, whereupon she was also injured. Rishi Pal also attempted to go towards his father but before that he was challenged and decided to run way. At that time, Bishambar, Anek Pal and others also arrived there and the witnessed the occurrence. Rishipal rushed towards home and was chased by the accused persons. Another brother of Rishi Pal, namely, Girwar was outside the house and he was also challenged by the accused persons, whereupon he too attempted to run away. He was, however, caught near the field of Lahi and was injured with "Lathis, Bhalas and Ballams. This part of the occurrence was seen by Anek Pal, Sher Pal, and several others. The accused persons after causing death and injuries left the place.

7. As usual inquest was conducted upon the body of two victims and the corpses were sent for post mortem examination. The investigation continued and the statements of the witnesses other than Smt. Longshri were recorded. Smt. Longshri was sent for medical examination on the next day and her statement could be recorded only subsequently as she was unable to speak due to injuries to the mouth and the face region.

8. The accused persons had pleaded not guilty to the charge.

9. The prosecution had examined, in addition format witnesses, PW 1. Rishi Pal PW 2 Smt Longshri and PW 3 Smt. Ram Sanehi, daughter of Ram Swarup. The first was a witness of both the occurrence and he has been corroborated by Smt. Longshri for the first part of the occurrence and Smt Ram Sanehi for the second part of the occurrence. The other witnesses examined were PW 4 Anek Pal and PW 5 Nek Pal. Both of them were declared hostile as they had not fully supported the prosecution version. However, it may be mentioned that PW 2 Anek Pal had stated about the occurrence and taken the stand that he could not recognise any of the mischief-mongers and PW 5 Nek Pal had denied his presence totally on the spot.

10. The prosecution had also examination PW 6 constable Ram Pal. who had carried certain sealed bundles PW 7 constable Ram Singh who had prepared the Chik FIR PW 8 Sita Ram Gangwar Section I. who had conducted inquest and PW 10 Ram Kumar Singh. S.I., Investigating Officer. PW 9 Dr S.C. Agarwal, and PW 11 Dr. G.C. Singh had conducted postmortem examination upon the body of deceased and the

medical examination of Smt. Longshri respectively. PW 12 Sri D.S. Nath, Deputy Collector was examined to prove the statements recorded by him u/s 164 Code of Criminal Procedure with which two witnesses, namely. Nek Pal and Anek Pal PWs 5 and 4. have been confronted This was an uncalled for evidence as it could not lead the court any where Since the witnesses had not stated any thing to connect the accused persons with the crime before the court itself, any statement recorded by the Magistrate earlier will not be of any value to add to their credit. The statement of Sri D. Section Nath would only further negative evidentiary value of Anek Pal and Nek Pal as the law that any statement recorded during enquiry could be tendered in evidence at the stage of trial has come to end after the enforcement of the new Code of Criminal Procedure in 1974. In any event, these statements recorded by Sri D. Section Nath could not be said to be the statements recorded during enquiry and had no effect whatsoever as against the accused persons.

11. The Appellants in this Court have made two pronged attacks on the evidence and consideration thereof by the trial court Their first contention has been that "he evidence was of interested persons and also not reliable, for various differences amongst themselves. The second contention has been that atleast Ram Charan, Atar Singh, Shiam Pal Singh and Gajju had no concern with the motive and further there was no evidence to show that the gun said to have been held by Atar Singh and Shiam Pal Singh was ever used or that any Lathi blow was given by then and as such the presences of these four atleast is rendered much doubtful. We will consider these aspects rather in detail

12. We have gone through the entire evidence along with the learned Counsel for the Appellants and given it our sincere thoughts irrespective of discussion recorded by the learned trial Judge. It need hardly be said that the observations of the trial Judge do carry weight with themselves and they have to ha deal with if a different conclusion is to be arrived at on independent reading of the evidence but at the same time those considerations may not be of much value if similar conclusions are hinted after independent reading of the evidence as such.

13. The first contention of the learned Counsel for the Appellants was that as admitted by PW 1 Rishi Pal. all the accused persons are better than him in health. He showed astonishment as to how persons in better health could fail to get him. Health is not the only factor and a healthy wrestler may not be able to keep pace with a lean hockey player these are different faculties which are better with different persons in different manners. One can understand the failure to cause any injury by gun at such a occasion and that may be given due weight but failure to get a person running ahead of them, cannot be said to be of any evidentiary value. For the same reasons, ability to catch hold of Garwar too cannot be given much weight, as two brothers can have different standings of different faculties.

14. It was also urged on behalf of the Appellants that the contention that Firwar, who was standing outside the house, in stead of running into his house, should not

have preferred to have an escape towards the field to save his self. It is something different to discuss action of a dead man after his death but whatever might have occurred to him at that time cannot be now worked out. Some times people behave in peculiar manner and then in such a case as one of the present nature, it was not a peculiar action as well. A person needs time not only to get into his home but also to get time to close the door and put the latch before invader can push it. Then again the attack on house to order to achieve end of the human being may also be feared by the person. In fact, one can keep on only imagining as to why Girwar behaved in that manner and that is no way for consideration of the evidence. When a fact is stated to have taken place in a particular manner, it is not to be discarded, merely because there could be another way for the accused or the deceased. Of course, if a person behaves in an absolutely impossible manner, that may be given weight but not for a mere improbability. It is not strange that it did not occur to even Rishi Pal to get into the house to save himself

15. Much stress was laid during arguments by the learned Counsel for the Appellants that both according to PW 1 Rishi Pal and PW 2 Smt. Longshri, all the accused assaulted deceased Ram Swarup and Smt. Longshri but there was no injury of Lathi or gun upon their person Gun was obviously not fired during the first incident and never upon the victims though few fires in air are said to have been made after the death of Girwar. However, upon the person of Smt. Roagshri, two contusions were found which were mentioned as injury No. 1 and 7 in the report Ext. ka-62. Similarly on the person of Ram Swarup, there were lacerated wounds and one contusion, which could have been caused by Lathi. Of course, there was no lathi injury upon the person of Girwar but that too does not make much difference. When there is an assault by a number of persons it is difficult to say as to whose Lathi or Ballam is sticking on the body. Naturally the whole movements, which are in air can be seen and few may at times few because of the movements of the victims so long as he tries to avoid one blow or the other. Even a person receiving injury cannot always describe all the injuries in detail to correct with different authors thereof To weigh a witness with the ratio to his intelligence quotient will be against the principles of law. This comes to help for the weaker and a person weaker in observation is also weak. Such weaknesses simply indicate naturalness of a witness and add to his credit. Cross-examination of the witnesses in this case has been in the general form that first obtain the details of the incident and then suggest by way of omission in that behalf by way of explanation to Section 162 Code of Criminal Procedure. That approach also cannot be looked upon with an eye of approval. At the same time, we may also observe that the accused is not be held guilty for this conduct of the counsel. The testimony of Smt. Longshri was assailed on behalf of the Appellants firstly on the ground that she was not interrogated by the Investigating Officer for a long time. It may be that at times the delay in interrogation of a witness by the investigating officer has been considered to be of negative value but it is not always so. In this particular case, the explanation was given in the form that Smt.

Longshri was unable to speak and this situation is too well shown from the injuries received by her of which atleast three were in the mouth region. Such a victim may be often shocked or even medically unable to speak for the fear of aggravation of injuries or even for more pain It was also urged that the prosecution theory that she was let unattended for the whole day in the field and Rishi Pain preferred to go straightaway to the police station without caring to take back her home does not stand to reason. It is always a matter of priorities which vary from person to person. If it has happened that way it cannot be said that it was impossible. The suggestion has been that Rishi Pal was, in fact, not in the village and he was sent for or somehow procured to lodge the first information report. In this way an impression was sought to be created that, in fact, neither Rishi Pal nor Smt. Ram Sanehi had seen the occurrence. If Rishi Pal was not in the village how could he lodge the FIR within a period of four hours, the distance of police station being 11 K.Ms. It was also attempted in the cross-examination of the witnesses to show that a possibility of anti timing in the report could not be denied. The availability of a possibility is something different and no one reads it with a presumption that there would be anti timing at the hands of the police wherever it is possible why the others do if? It is not possible to imagine that subsequent FIR must keep on pouring within every 15 minutes at every police station, and if the gap between the two FIRs was to be taken as a routine for assuming anti timing on the part of the police, no FIR could be relied upon There is no presumption of wrong thinking on the part of any person what to say of a public servant. It has to be worked out with cogent evidence which is wanting in this case and not merely by availability of an opportunity. Smt Longshri is not only an injured witness but her action in attempting to save her husband is so natural that it cannot be easily brushed aside.

16. PW 5 Smt. Ram Sanehi is daughter of Ram Swarup and sister of Girwar She has corroborated Rishi Pal in the matter of second part of the incident, which took place a little north east to the house. Her statement that Rishi Pal rushed through near the house is very natural and obviously seeing him running Girwar also adopted the same course It has also been made out in her cross-examination that Omna was also the witness but it is also indicated that she is not a lady of balanced mind. It was also urged that since in the earlier incident which forms the basis of motive for this crime, Omna was attempted to be taken away, she should have been the main target of the accused persons if they were really there. It may be mentioned that in fact, that indications have been in the form that even in that occurrence they were attempting to take away Omna under the impression that she was Ram Sanehi, who had been the real witness in the earlier occurrence. That case having come to an end by now, for some reason may leave a scar in the mind of the victims but the assailants may or may not have higher animosity in their mind so as to go for murder of a daughter of the family. In any event, the impression seems to carry an idea weighing the evidence of witnesses against possible mentality or mental thinking of the accused persons, and there is no occasion for comparison of these

two.

17. It was also urged that Smt. Ram Sanehi was not mentioned as a witness in the first information report. She is a lady of the family and the mere omission of her name In the FIR cannot undo the ordinary factor that females are generally at home. She was interrogated by the Investigating Officer and named in the chargesheet.

18. The evidence of the three witnesses mentioned above was also challenged on the ground that they are interested persons and those who are not interested, namely, Anek Pal and Nek Pal have not said a word against the accused. One has to see the foundation carried by Interest In such cases. Being a person closely related to the deceased or victim or even being the victim himself, does not make a man interested in the evidence. The nature of interest varies from case to case and witness to witness. In the matter of civil suit on the basis of the promissory note the Plaintiff may be very much interested because his own evidence is likely to give him a monetary benefit but in the matters of murder the informant may or may not be interested even if the victim happened to be his father or a son as is not likely to get back his relation and all that he desires by giving evidence is that the culprit should be brought to books. This is interest for the enforcement of law and has to be only appreciated. Even the interested testimony is not always to be discarded and would simply make the court cautious about the evidence rendered as the evidence to be scrutinised rather closely. In the matters of serious offences and for snatching liberty of a person even for a short while, the courts are always cautious and scrutinise testimony. In the present case, the interest of these three in the matter in issue was not to get back to life the brother or father but allow the law to take its own course against these who had been playing with the law since long and could even manage to get pardon from the President of India at some time.

19. We should keep ourselves alive to the thought that the old enmity could have persuaded these three persons to give evidence against the accused persons, namely, Ragghu. Jaggu. Dharam Singh and their friends but then there was the other reason also for it the death of Ram Swarup and Girwar was caused in the broad day light. The suggestion that it was a murder of dark early hours stands rebutted by several factors and is not in conformity with the medical evidence. It was too well shown even by PW 4 Anek Pal who had gone hostile that the Incident had taken place at about 8 a.m. in the morning of October. The position of food and stomach perfectly agreed with the statement of PW 3 Ram Sanehi, PW 2, Smt. Longshri that they had taken their food early in the morning and in any case this situation of food could not be there if the murder was committed in the small hours of morning. One may take food early as also stated in this case but there is no likelihood of taking dinner around 2 am. The defence suggestion which has once given that these persons were done to death by certain dacoits who had also been accomplice of the victims also does not stand to reason and the matter is too hollow to be given any weight.

20. We will lastly move to the consideration of the evidence as against Ram Charan, Atar Singh, Shiam Pal Singh and Gajju. These people are taken away as a separate bunch of accused because of the argument of the learned Counsel for the Appellants that they had nothing in common with Ragghu, Jaggu, Dharam Singh, Sripal and Jai Pal and, in fact, came from different villages. The remaining accused belonged to village Kazikhera while Gajju belonged to Village Karel. P.S. Allapur, Ram Charan is Pradhan of Isapur P.S. Jagaur and Atar Singh and Shiam Pal Singh belonged to village Deonani P.S. Hazratpur It is remarkable that Atar Singh and Shiam Pal Singh who were said to have been armed with guns are not said to have used them at any time. At best they fired at the time of departure, which would not mean any participation in the crime itself and looking to the circumstances obtaining at that time not even for good escape. Even if their presence at the spot could be accepted in the from that they rejoiced the achievement of the two murders they cannot be said to be guilty of any crime. Ram Charan was possibly not even well known to PW 1 Rishi Pal as he was not certain as to how had came to know his father's name and whether it was conveyed to him before the FIR or after. The situation does indicate that he has been roped in at the instance of some body else. The position of Gajju is also somewhat similar.

21. Though it was urged on behalf of the State that there was no suggestion on the part of these accused Appellants as to why they have been falsely implicated, the question again revolves around the basic principle relating to motive. False prosecution is also a wrong life an offence, and as it is not always possible for the prosecution to know the motive behind the offence, it is equally not always possible for the accused persons to know the reason behind their false prosecution, which may be anything from the mental thought of the person preparing the FIR to conspiracy between him and the persons unknown to the prosecution, case. Thus absence of motive for false prosecution, therefore, also cannot be given much weight and other factors as they are have to be considered by the Court. Looking to the entire evidence the possibility appears to be more towards their false prosecution and for that reason they should have been atleast given a benefit of doubt.

22. In result this appeal should succeed in so far as it relates to Gajju, Ram Charan, Atar Singh and Shiampal and should fail in so far as it relates to Ragghu, Jaggu, Dharam Singh, Sripal And Jai Pal.

23. The appeal of Ram Charan, Atar Singh, Shiam Pal and Gajju is accepted. The conviction and sentence recorded against them by the Sessions Judge are hereby set aside and they shall stand acquitted of the charges framed against them. They are on bail. They need not surrender. Their bails and bonds are cancelled and sureties discharged.

24. The appeal of Ragghu, Jaggu, Dharam Singh, Sripal, and Jai Pal is dismissed. The conviction and sentence rendered by the Sessions Judge against them are hereby

maintained. They are on bail. They shall surrender to their bail and serve out the sentences according to law-Appeal dismissed.