

(2007) 05 AHC CK 0335

Allahabad High Court

Case No: None

Ram Prasad and Dariyao

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision: May 14, 2007**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302

Hon'ble Judges: Vinod Prasad, J; K.S. Rakhra, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Vinod Prasad, J.

The appellants were tried by 111 Additional District and Sessions Judge Badaun vide S.T. No. 60 of 1981 State versus Ram Prasad and Others and were convicted for the offences u/s 302 149 IPC vide its order dated 7.12.1981. Appellants Ram Prasad, Dariyab, Rohan and Mahipal were convicted u/s 148 IPC, Sundar and Chhotey were convicted u/s 147 IPC with the sentence of life imprisonment on the first count 1-1/2 years R.I. imprisonment on the second count and one year R.I. imprisonment on the last count. All the sentences were directed to run concurrently. The aforesaid convictions and sentences have been challenged by the appellants in this appeal.

2. During the pendency of this appeal two of the appellants Dariyab and Sundar died and therefore their appeal is abated.

3. The prosecution case against the rest of the appellants are that Maya Devi wife of Ram Prasad appellant was murdered by informant Kunwar Pal Singh and his father Sardar Singh who is the deceased in this case. The criminal trial in respect of the aforesaid murder of Maya Devi was pending in court. Because of the aforesaid murder, on 17.10.1980 at about 8 A.M. when the informant was ploughing the field of Shyam Lal s o Banshi, which had been taken by him on lease and his father Sardar

Singh (deceased) had gone there to give him Biri and match box then all of a sudden the appellant alongwith two deceased appellants came on the spot. Appellant Ram Prasad was armed with gun, Dariyab with country made pistol, Chhotey Lal and Sindar with lathi. Rohan with Gandasa and Mahipal was armed with Ballam. Ram Prasad and Dariyab from their fire arms shot at Sardar Singh who sustained firearm injuries and ran towards west. Informant seeing his father being shot ran towards west. Sardar Singh deceased was surrounded in the field of Dharmi s o Bhoopi Ahir and at the instigation of Sundar and Chhotey rest of the accused persons assaulted him with lathi, Gadasha and Ballam. Hue and cry made by the informant and the sound of fire attracted co villagers Heera singh, Karan Singh, Ram Charan and many others, who all sprinted towards spot on which the accused persons leaving the deceased made their escape good towards south. Sardar Singh died on the spot because of the murderous assault by the appellants. Kunwar Pal Singh informant went to the Police Station and lodged the oral FIR on that very day at 11.15 A.M. covering a distance of 12 km. north.

4. Head Constable Rajendra Pal Singh P.W. 8 registered the oral FIR and proved the chik FIR as lix. Ka 1 and the GD entry Ex. Ka 13.

5. Sub Inspector Mahi Pal P.W. 7 took the investigation who after concluding the usual investigation submitted the charge sheet against the accused persons in court on 13.10.1982.

6. The Post Mortem on the dead body of the deceased was. conducted on 18.10.1980 at 4 P.M. by Dr. N.P. Singh P.W. 5 who found that rigor mortis had passed off from the body and decomposition had set in. On external examination he found following injuries on the dead body:

1. Incised wound 4 cm x 1 c.m x bone over (Rt.) parietal region 8 cm. above ear, clean-cut margin with sharp edge.

2. Incised wound 2 cm x 1/2 cm x bone over (Rt.) mastoid clean-cut margins with sharp edges.

3. Abrasion 2 cm. x 1 cm. over (Rt.) Eyebrow.

4. Lacerated wound 4 cm. x 1cm. Bone over (Lt.) parietal region 6 cm. above Ear

5. Lacerated wound 3 cm. x 0.5 cm. x Scalp over top of head.

6. Contusion 6 cm. x 4 cm. over (Rt.) Cheek.

7. Lacerated wound 3 cm. x 1 cm. over (Rt.) side of chin fracture of body of (Rt.), lower jaw present.

8. Multiple gun shot wound of entry each 0.25 cm. x 0.25 cm. x skin to muscle deep over back and upper 2/3 of (Rt.) forearm in an area of 16 cm. x 8 cm., direction forward.

9. Contusion 12 cm. x 2 cm.- over outer side of (Rt.) shoulder extending up to upper 1/3 of (Rt.) upper arm.
 10. Abraded contusion 6 cm. x 2 cm. over outer side of (Rt.) chest 6 cm. below nipple.
 11. Contusion 6 cm. x 4 cm. over dorsum of (Lt.) hand.
 12. Incised wound 3 cm. x 1 cm. x muscle cut in between crease of thumb and index finger of (Lt.) hand, clean-cut margin with sharp edges.
 13. Stab wound 1.5 cm. x 0.75 cm. x cavity over (Lt.) supracavicular fossa, clean cut margins with sharp edges, directing down ward and back ward.
 14. (P.T.) Multiple gunshot wound of Entries each 0.25 cm. x 0.25 cm. x skin to muscle deep over, (P.T.) and inner side of middle 1/3 of (Rt.) thigh in an area of 10 cm. x 9 cm., direction back ward.
 15. (P.T.) Multiple gunshot wound of Entry each 0.25 cm. x 0.25 m. x skin to muscle deep over front and inner side. (P.T.) Thigh, middle 1/3 in an area of 8 cm. x 4 cm., direction, back ward.
 16. Abrasion 2 cm. x 1 cm. over front of leg (Rt.) 8 cm. above ankle.
7. On internal examination he found that plura under neath injury No. 15 was punctured, parietal bone of both sides were fractured. There was fracture of right side maxilla bone and lungs were congested. Large I small intestine contained gases and feacal matter was present. 49 small pellets were found embedded inside gun shot injury of which 19 pellets beneath injury No. 14 and 8 pellets under the injury No. 15 were recovered In the estimation of the doctor death had occurred due to shock and hemorrhage because of sustained injuries by the deceased. The injuries could have been caused at and about the time of the incident and were possible by weapons assigned to the accused by the prosecution and were sufficient in the ordinary course of nature to cause death.
8. The case of the accused was committed to the court of Sessions and III Additional District and Sessions Judge, Badaun charged the accused appellants for respective offences on 30.7.1981. Charges were denied by the accused appellants and they claim to be tried.
9. Prosecution to prove the guilt of the appellants examined eight witnesses in trial. Kunwar Pal P.W. 1, Karan Singh P.W. 2 Heera Singh, P.W. 3, Ram Charan P.W. 4 were the witnesses of feet and Dr. N.P. Singh P.W. 5, Nem Singh constable P.W. 6, Mahipal Singh I.O. P.W. 7 and constable Rajendra Pal Singh P.W. 8 were formal witnesses.
10. Kunwar Pal P.W. 1 before the court narrated the prosecution case and deposed that Dariyab, Ram Prasad and Chhotey Lal are the sons of Sundar and all of them are accused in this case. Appellant Mahi Pal was the cousin brother of appellant Dariyab and Ram Prasad. Appellant Rohan is the son of appellant Jeeva Ram and is

the uncle of appellant Dariyab and Ram Prasad. All the accused persons belong to one group. Three years prior his deposition, Maya Devi wife of appellant Ram Prasad was murdered in the night in which informant and his father Sardar Singh deceased were arrayed as accused, but they were granted bail by the court. Because of the aforesaid murder accused nurtured enmity from the informant. On the date and time of the incident (17.10.1980 at 8 a.m.) he was ploughing the field of Shyam Lal, which he had taken on lease. His father had come there to give him Biri and matchbox. At that time accused Ram Prasad armed with gun, Dariyab armed with country made pistol, Sundar and Chhotey Lal with lathi. Rohan armed with Gadasa and Mahipal armed with Ballam, all of a sudden appeared on the field and Ram Prasad and Dariyab fired at Sardar Singh (deceased) from their firearm. Deceased sustained two firearm injuries from the shots made by those two accused persons. Witnessing this part of the incident informant took to his heels towards his village. The deceased also ran towards west to save his life who was surrounded in the field of Dharmee, where also a shot was fired and rest of the accused persons who were armed with Lathi Ballam and Gadasa, butchered the deceased. The cry for help by the informant attracted Karan singh, Heera Singh and Ram Charan who saw the incident and challenged the accused persons on which the accused persons made their escaped good towards west. The informant and the witnesses found Sardar Singh dead because of the sustained injuries. The informant thereafter went to the police station and lodged an oral FIR (Lx.Ka 1). In his cross-examination he disclosed the pedigree of his family and stated that his grand father Maharam Singh had three sons, Sardar Singh (deceased) Gajraj and Ram Swaroop. Witnesses Ram Charan and Heera Singh are his cousin brothers being s/o Ram Swaroop and Gajraj. Karan singh witness is the s/o Haridwari who, from the village relationship, was his uncle. He had been cross-examined in respect of his earlier marriages and some suggestions were given to him in that respect which he had denied. He deposed that the cause of the murder of the decease was the earlier murder of Maya Devi. He had admitted that in the murder of Maya Devi the role of main shooter was assigned to him and his father the deceased was assigned the role of instigation and both of them were falsely implicated in the aforesaid case. He had denied the suggestion that he had not taken any field of Shyam Lal on lease. He had been subjected to lengthy cross-examinations on the topography but nothing material came out of it. He had further deposed that he had seen two empty cartridges and a miss cartridge, which were thrown in the field of Dharmee. He has further deposed that he was ploughing the field since one hour before the incident and after ten minutes his father had also reached there. He further deposed that he had shown the place, from where he had seen the incident to the I.O. and in midst of the incident the bundle of Biri and matchbox had fallen down on the spot. He had denied the suggestion that he had not seen the incident and the deceased was done to death at 4 O'clock in morning when he was all alone and the accused persons have been falsely implicated because of previous murder enmity. He had also deposed that the deceased had run after sustaining firearms injuries and he was

surrounded and murdered in the field of Dharmee. He had admitted that he escaped unhurt and he did not make any effort to save his father because he was unarmed. He had further stated that he had two brothers; younger one was of only 8 or 10 years of age. He denied the suggestion that the FIR was lodged belatedly after looking to the post mortem report. He admitted that the spot inspection was conducted by the I.O. at his pointing out.

11. Karan Singh P.W. 2 in his deposition supported the prosecution version as stated by Kunwar Pal P.W. 1 and had further deposed that the informant saw the incident from northern boundary of the field of Dharmee and the deceased was done to death in middle of the said field. He had further stated that he had seen the deceased running for his life and the accused persons who were armed with sharp edged weapons and blunt weapons had given 2 or 4 blows to the deceased who was empty handed. He further deposed that the deceased was thrown on the ground and thereafter he was assaulted with sharp edged and blunt weapons. He had also deposed that at the time of the incident he was in his field and after hearing the gunshot he was attracted at the place of the incident and at that relevant time informant was ploughing his field. He had denied the suggestion that he had no field near the place of the incident and because of some distant relationship and to save the informant from the murder case of Maya Devi he was telling false hood.

12. Heera Singh P.W. 3 also supported the prosecution version on all, the material aspects of the matter and had stated that he was on his field when the incident occurred and he reached on the place of occurrence after hearing the gunfire. He had been subjected to lengthy cross-examination but nothing material has come out in his deposition. He had denied the suggestion that he was not present on the spot nor had witnessed the incident.

13. Ram Charan P.W. 4 also supported the prosecution version on all the material aspects of the matter and had denied the suggestion that he had not seen the incident and being a relative and to save the informant from the murder case of Maya Devi he was testifying falsely against the accused persons.

14. Dr. N.P. Singh P.W. 5 proved his post mortem examination report Ext. Ka 2 and Ka 2-A and had proved the injuries of the deceased and internal examination as has been mentioned above. Nothing material has come out from his cross-examination by the defence.

15. Nem Singh P.W. 6 stated that he had carried the dead body of the deceased to the mortuary for performance of autopsy.

16. Mahipal Sub Inspector P.W. 7 who is the I.O. of the crime proved the inquest report Ext. Ka 3 and had testified that the FIR was registered in his presence at 11.15 A.M. on 17.10.1980. He had further proved the challan lash, photo lash seal impression, letter to R.I. and C.M.O. as Exts. Ka 4 to 8. He further deposed that after the inquest was over, the body in a sealed condition was handed over to the

constable Nem Singh and Prem Pal Singh for being carried to the mortuary. He had proved the recovery memo of blood stained and plain earth as Ext. Ka 9 and the recovery memo of empty and missed cartridge as Ext. Ka 10. He had also proved the site plan as Ext. Ka 11 and charge sheet dated 31.10.1980 as Ext. Ka 12. He had been mainly cross-examined only on the omissions and contradictions and had deposed that the corpus of the deceased was found in the field of Dharmee and he had not interrogated Shyam Lal whose field was taken on lease by the informant.

17. Rajendra Prasad P.W. 8 had proved the chik FIR Ext. Ka 1 and the relevant GD entry Ex. Ka 13 and had denied the suggestion that the report was not registered at the time it is alleged to have been lodged.

18. Accused persons in their statement u/s 313 Cr.P.C., recorded on 9.11.1981 denied the incriminating circumstances appearing against them in the evidence and took the defence of false implication because of the murder of Maya Devi wife of accused appellant Ram Prasad.

19. Third Additional District and Sessions Judge Budaun, finding the case of the prosecution proved to the hilt recorded the conviction and sentence against the appellants as has been mentioned above. Hence this appeal.

20. We have heard Sri P.N. Misra learned senior Counsel in support of this appeal assisted by Sri Apul Misra and Sri Sudhindra Kumar learned AGA on behalf of the State.

21. Sri P.N. Misra, learned senior Counsel contended that the FIR in the present case is ante timed and first informant, was not present on the spot. He submitted that in the murder case of Maya Devi informant Kunwar Pal was the real assailant and had he been present on the spot, he certainly would have been murdered and accused persons would not have spared him. He, therefore, contended that this incident had not taken place because of the murder of Maya Devi but some unknown persons have committed the murder with ease in early hours of the morning without any body witnessing it. He further submitted that Heera Singh P.W. 3 and Ram charan P.W. 4 had clearly deposed before the trial court that when the I.O. had come on the spot then inquest was already over and after that the FIR was registered at the dictation of the informant Kunwar Pal and his thumb impression was taken. learned senior Counsel for the appellant advancing the said argument also harangued tint the said statement by P.W. 3 was supported h P.W. 1 also who had stated that the I.O. had reached on the spot in after noon then he had conducted investigation. On the basis of the aforesaid statements, learned senior Counsel submitted that prosecution version is not true and correct. He has further submitted that there is no injured witness of the incident and all (he witnesses of fact are inimical and related to each other and partisan and therefore, their testimony should not be relied upon. He had further submitted that there was no reason for the two of the appellants Rohan and Mahipal to join other accused persons, as they had no motive

at all to commit the murder. He has further pointed out that the FIR was sent belatedly to the police head quarter and therefore, FIR is ante timed. Consequently, he had contended that the prosecution has failed to prove the charge and therefore the appeal deserves to be allowed and surviving appellants Ram Prasad Chhotey Fal, Rohan and Mahipal deserve to be acquitted.

22. Learned AGA on the other hand contended that in this case incident occurred in day light in the witnessing of the informant Kunwar Pal P.W. 1 and other witnesses, Karan Singh P.W. 2, Heera Singh P.W. 3 and Ram Charan P.W. 4 and all of them have supported the prosecution version in all its material aspects of the matter and the defence has not been able to damage their testimony by any evidence on record, he further contended that the version given by the witnesses of fact are cogent, consistent and reliable and their testimony is credit worthy and acceptable. He further submitted that post mortem examination report fully supports the prosecution version and the injuries sustained by the deceased were caused by the weapons assigned to the appellants, he further submitted that the investigation conducted by the Sub Inspector Mahi Pal P.W. 7 is above board and therefore, on all aspect of the matter the prosecution has been able to substantiate facts of the crime and prove the guilt of the appellants beyond reasonable doubt who deserve to be convicted and appeal being meritless deserves to be dismissed.

23. We have given our anxious consideration on the submissions raised by the learned Counsels for the rival sides and have perused the evidence and other material on record carefully.

24. A perusal of the record indicates that the incident had occurred in daylight as has been alleged by the prosecution and this part of the prosecution allegation has not been disproved even slightly by the defence. The motive of the said incident was alleged to be the earlier murder of Maya Devi wife of the appellant Ram Prasad, which in our view was the sufficient motive for the accused to revenge her death, it is to be noted that in the murder case of Maya Devi, as has been stated by the informant, the accused remained in Jail only for 20 or 25 days and then were bailed out. Their short incarceration into Jail in that murder of Maya Devi must have angered the appellants. Therefore, we find that there was sufficient motive for the accused persons to commit the murder of the deceased who was one of the accused for the aforesaid murder of Maya Devi.

25. From the evidence on record it is also established that the deceased had sustained injuries by various weapons as he had sustained, two injuries by gunshot, 3 incised wounds, one stab wound, three lacerated wounds, 3 contusions and one abraded contusion. All these injuries are consistent with the weapons assigned to the accused persons. Dr. N.P. Singh P.W. 5, who had conducted the post mortem examination on the dead body of the deceased has clearly stated that the death could have been occurred at or about the time of the incident and the injuries sustained by the deceased could have been caused by the weapons assigned to the

appellants. In this view of the matter the ocular testimony is well supported by the medical evidence as well.

26. Coming to the contention raised by Sri P.N. Misra learned senior Counsel for the appellant, regarding the presence of the informant on the spot, we find that the deceased was an aged person. The site plan indicates that the accused persons arrived at the scene of the incident from the side where deceased was present. Consequently he was the first victim. Being an aged person he could not run away to save his life, whereas the informant being a young man of 20 years succeeded in escaping his death. In the site plan the place "A" (cross) is the place where the deceased was sitting and had sustained firearm injuries and "A" is the place from where the accused persons had arrived. In between A and C the informant was not there. More over we cannot speculate as to why the accused persons opted to murder the deceased and left the informant unhurt. One of the reasons may be that the informant was a young man inexperienced enough in the life and the deceased must have been more dangerous in contesting the case of murder of Maya Devi. It is not for us to roam in suppositions and to disbelieve the cogent, reliable and consistent evidences of the prosecution witnesses.

27. There seems to be much substance in what learned AGA has argued that as the deceased was injured because of sustained gun shot injuries, he could not save his life. More over from the evidence of P.W. 1, we find that there is nothing in his evidence which support the argument raised by the learned senior Counsel for the appellants. The defence has not been able to cross-examine the informant as to whether any attempt was made to annihilate him by the accused persons or whether he was chased or not. From the perusal of the statement of the first informant we find total dearth of such evidences. First submission raised by Sri P.N. Misra, learned Counsel for the appellant is therefore rejected.

28. Coming to the second contention of the learned senior Counsel that the FIR is ante timed, we find the said submission also unmerited for the simple reason that from the Head Constable who had recorded the FIR and from the I.O. coupled with the deposition of informant nothing has been elicited worth reliable even on the probability that the FIR was lodged ante timed. We cannot discard otherwise cogent, reliable and acceptable testimony of the first informant in this respect. P.W. 3 and P.W. 4 had not gone to the police station to lodge the FIR and therefore their evidence in that respect, to us seems to be wholly unworthy of credence. In view of such evidence we have no hesitation in accepting that the prosecution version that the FIR was lodged at the time alleged to have been lodged and it is not ante timed and cooked up is well merited. In this view of the matter the second submission of the learned senior Counsel for the appellant also does not impress us and therefore, we discard it as well.

29. Since we have found that the FIR version is reliable and testimony of P.W. 1 informant is acceptable and consistent, we do not propose to further prove with

other aspect of the matter as these facts coupled with consistent medical examination report and post mortem report cemented the guilt against the appellants well enough.

30. The appeal of the two appellants Dariyab and Sundar has already stands abated therefore, we do not pass any order in this judgment in their respect.

31. On the discussions made above, appeal of Ram Prasad, Rohan, Mahipal and Chotey lacks merit and it is dismissed. These appellants are on bail. They are directed to surrender forthwith. CJM Budaun is directed to take immediate steps for their arrest. As soon as they are arrested they shall be sent to Jail to serve out the sentence as had been awarded by the impugned judgment. Their bail bonds and sureties bonds shall be cancelled thereafter.

32. Let a copy of this order be certified to CJM, Badaun for its intimation who is directed to report the compliance of this order to this Court within a period of three months from today.

33. This appeal will be listed in the first week of July 2007 for considering the report of CJM, Badaun.