
(2000) 03 AHC CK 0135

Allahabad High Court

Case No: Criminal Appeal No. 1133 of 1980

Krishna and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 31, 2000

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2000) CriLJ 4956

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

Bench: Division Bench

Advocate: Virendra Saran, Viney Saran, K.D. Tripathi and D.N. Wali, for the Appellant;
A.G.A., for the Respondent

Final Decision: Allowed

Judgement

M.C. Jain, J.

This appeal was preferred by four appellants, namely Shri Krishna, Siya Ram, Ram Bilas and Suraj Ram against the judgment and order dated 24-4-1980 passed by Sri Sachhidanand, the then Sessions Judge, Farrukhabad in Sessions Trial No. 373 of 1979, convicting each of them u/s 302 I.P.C. read with Section 34 I.P.C. Each of them has been sentenced to life imprisonment for the said offence. Out of the four appellants, Shri Krishna and Suraj Ram died during the pendency of the appeal as per report of the Chief Judicial Magistrate, Farrukhabad. Therefore, the appeal abates in respect of them. Presently, we are concerned only with the remaining two appellants, namely, Siya Ram and Ram Bilas.

2. Salient features of the prosecution case may be set forth. The incident took place on 16-8-79 at about 6 a.m. in village Bhiraaur, Police Station Mau Darwaza, District Farrukhabad. The first information report was lodged by an eye witness, namely, Bhoomi Raj, PW 1 (brother of the deceased) on 16-8-79 at 9.20 a. m. The distance of the police station from the place of occurrence was 5 miles. The deceased was

Radhey Shyam. On the fateful day and time, the deceased was going with plough to his field. He was being followed by the informant Bhoomi Raj PW 1 who too was carrying a plough. There was a stream in the way which was to be crossed to reach the field. When the deceased Radhey Shyam entered the stream, the accused came out from the sugarcane and Dhencha field wherein they had hidden themselves. Shri Krishna, Siya Ram and Ram Bilas were armed with spears whereas Suraj Ram had a lathi. All of them started assaulting Radhey Shyam with their weapons in the stream itself. The informant Bhoomi Raj PW 1 raised shouts which attracted Daroga, Raja Ram and Jagannath who were also going with their ploughs to their fields. Chet Ram and Ankush who were going to take bath were also attracted to the scene. All of them challenged the accused, but they dragged Radhey Shyam from the stream to the nearby field of Balak Ram and assaulted him there too. Radhey Shyam died then and there and accused ran away towards the western side. There was said to be a previous background in that the accused had assaulted Bhoomi Raj PW 1 two years back. In retaliation, Radhey Shyam had assaulted the father of the accused. It was because of this enmity that Radhey Shyam was murdered in the present incident. On the lodging of the F.I.R., a case was registered. The investigation followed whereafter all the four accused were booked and tried. The trial ultimately culminated into the judgment and order under challenge in this appeal.

3. The post-mortem over the dead body of Radhey Shyam was conducted on 17-8-79 at 11.30 A.M. by Dr. Harendra Pratap PW 3. The deceased was about 35 years of age. Nearly 1 1/2 day had passed since he died. The following ante-mortem injuries were found on his person :

1. Incised wound on nose upper part 1/4" x 1/4" x 2/10", bone cut.
2. Incised wound right side forehead 1/2" above eye brow V2" x 1/4i" x 1/4", bone cut.
3. Incised wound 2" x 1" x scalp deep 2" above right ear.
4. Incised wound 1 1/2 x Ms" x 1/2", 1" out to injury No. 3.
5. Incised wound 3" x 1/2"" scalp deep, behind injury No. 3.
6. Incised wound 2" x 1/2" x scalp deep, left side occipital region.
7. Incised wound 1 1/2" x V2" x left parietal bone deep, bone cut, 2" x out to injury No. 6.
8. Incised wound right side neck 1/2" x 2/ 10" x skin deep.
9. Penetrating wound 1" x 1/2" x abdominal cavity deep in epigastrium just on right side, liver cut.
10. Penetrating wound right 8th I/c space in mid clavicle line 1/2 x 1/4" x 1, liver cut.
11. Incised wound 1/4" x 2/10" right arm back middle.

12. Incised wound right side chest 1/4" x 1/4" x 1/4", 2" above and medially at 10'clock position.
13. Penetrating wound 1/2" x 1/4" x 1" deep right scapular region, right scapula cut.
14. Penetrating wound right penial angle 1" x 1/2" x 1".
15. Penetrating wound 3rd lumbar space 1/2" x 1/4" x 1/2", 3rd lumbar bone cut.
16. Penetrating wound left hip, upper back 1" x 1/4" x 1".

4. The deceased had died due to shock and haemorrhage as a result of ante-mortem injuries.

5. At the trial, the prosecution examined as many as six witnesses out of whom Bhoomi Raj PW 1 and Raja Ram PW 5 were the eye witnesses. The rest were formal witnesses including Doctor and Investigating Officer. The defence was of denial and of false implication due to enmity. Ram Dularey Lal, Lekhpal was examined as DW 1 to show that Raja Ram PW 5 had two fields of the southern side and one field in the western side in the Abadi of village Dalkanagla and he had no other field.

6. We have heard Sri Vinay Saran, learned counsel for the accused-appellants and learned A.G.A. The record of the case has also been carefully examined by us. After careful consideration, we form the opinion that there are inherent and apparent weaknesses in the prosecution case on account of which the impugned judgment and order cannot be sustained. We proceed to deal with the relevant aspects of the matter and detailing the reasons for our this conviction in the succeeding discussion.

7. It has first to be noted that there was no immediate motive for the accused appellants to commit the murder of Radhey Shyam. Of course, the motive becomes insignificant when there is eye witness account. But in the case where the prosecution assigns a motive, it is desirable that it should prove it. To say in other words, the motive is then required to be tested on the anvil of probabilities. In the present case, earlier incident of Marpit had taken place about 1 or 1 1/2 years back in which Bhoomi Raj PW 1 had allegedly been beaten up by Shri Krishna and Siya Ram together with two others. It has been so stated by Bhoomi Raj PW 1 in his deposition. It was one month thereafter that Radhey Shyam deceased had beaten up Narain (father of the accused Shri Krishna and Siya Ram). It is obvious that the incident had taken place long before and it could hardly be a move for the accused to murder Radhey Shyam. It is to be noted that Shri Krishna and Siya Ram were real brothers; Ram Bilas was their cousin and Suraj Ram was their uncle. What we wish to indicate is that it was highly improbable that all close relations would have taken it into their heads to murder Radhey Shyam for some incident of Marpit that had taken place nearly 1 1/2 years back. So the motive assigned by the prosecution does not have the attraction of logic.

8. Secondly, it is a case of single eye witness, namely, Bhoomi Raj PW1. No doubt Raja Ram PW 5 was also examined as an eye witness. But we are of the opinion that the learned Sessions Judge rightly did not place reliance on his testimony for cogent reasons. For the last about 20 or 22 years he was residing in another village Amlapur. It was doubtful that he had come to village Bhiraur in the evening preceding the day of incident to look after his cultivation. The incident took place in the northern side of the village of the Abadi and as per the testimony of Ram Dularey Lal DW 1, Raja Ram PW 5 had no field towards that side. Thus, the reason given by him for his presence at the spot that he was going with plough and bullocks to his fields, could not be accepted. To be short, his presence at the spot has rightly been disbelieved with the result that there remained only the testimony of Bhoomi Raj PW 1 brother of the deceased. Obviously, he is an interested witness. He is also not found to be wholly reliable. It may be so stated in other words that he is a party reliable witness. His testimony, however, does not find support from independent sources. Rather it is inconsistent with the medical evidence and does not fit in the natural probabilities of the situation. As per own case of the prosecution and his testimony, the enmity of the accused persons against him was the same as against the deceased. He was, thus, bracketed with his deceased brother so far as the enmity aspect was concerned. Judged in this perspective, it sounds to be improbable that despite his being following the deceased, he would have been spared unharmed by the accused persons.

9. Thirdly, it is further to be noted that the deceased sustained as many as 16 injuries in the form of incised wounds and penetrating wounds as is clear from his postmortem report. It appears as if he had been assaulted by the assailants at ease and leisurely when there was none to challenge them, the version of Bhoomi Raj PW 1 is that the accused first drowned Radhey Shyam in the stream repeatedly with thrashing being given to him simultaneously. The distance of the field of Balak Ram to which he was dragged from the stream was 15-16 paces. The accused persons, according to him., dragged him through this distance from the stream to the field of Balak Ram where he was assaulted, but at the time of his post-mortem, there was not found to be any mud either on his clothes or on his body. There was no sign of dragging either in the form of abrasions or scratches on his dead body which would have certainly been if he was actually dragged. There was also no blunt weapon injury on his dead body. It would be recalled that the case and evidence of the prosecution through the statement of Bhoomi Raj PW 1 is that the accused Suraj Ram was armed with lathi wherewith he had struck the victim. So, it is well demonstrated that part of the testimony of Bhoomi Raj PW 1 is false and he is not a wholly reliable witness. His version is not in harmony with the medical evidence. On judicially scrutinizing the testimony of the sole interested eye witnesses Bhoomi Raj PW 1 in an analytical manner, it appears to be doubtful that he was actually present at the spot at the time of the incident and witnessed it. There are several black spots in his evidence and the same goes uncorroborated by independent sources. Rather

his testimony does not reconcile with the inherent probabilities. The greater possibility is that Bhoomi Raj PW 1 did not witness the occurrence at all and he has simply delivered the testimony on the basis of his imagination woven on the premise of suspicion against the accused person. The same does not stand the test of scrutiny. No doubt, Radhey Shyam was the victim of violence. But the evidence on record is absolutely meagre to find the accused appellants to be guilty of this crime. We shall, therefore, allow this appeal.

10. In conclusion, we allow this appeal and set aside the impugned judgment and order. Accused appellants Siya Ram and Ram Bilas are acquitted. Their personal bonds and bail bonds are hereby cancelled. Accused appellants Shri Krishna and Suraj Ram having died during pendency of the appeal, the appeal has abated too so far as they are concerned.

11. Let a copy of this judgment along with the record of the case be immediately sent to the Court below for necessary entries in the concerned registers under intimation to this Court within two months positively.