

**(2006) 11 AHC CK 0203**

**Allahabad High Court**

**Case No:** Criminal M.B.A. No. 5134 of 2006

Ram Suresh

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Nov. 9, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 439
- Penal Code, 1860 (IPC) - Section 302, 307, 504
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)(5)

**Citation:** (2007) 3 ACR 2472

**Hon'ble Judges:** Vinod Prasad, J

**Bench:** Single Bench

**Advocate:** V.P. Srivastava, Lav Srivastava, Ramanuj Pandey, R.N. Shukla and B.K. Tripathi, for the Appellant; R.B. Sahai, S.C. Srivastava, Nripendra Chaturvedi and A.G.A., for the Respondent

**Final Decision:** Allowed

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**Judgement**

Vinod Prasad, J.

Ram Suresh applicant has filed this bail application u/s 439, Cr. P.C. seeking his release in Crime No. 230 of 2005, u/s 302/504, I.P.C. and Section 3(2)(V) SC/ST Act, P.S. Girwan, district Banda. His bail prayer has been rejected by both the courts below and the bail rejection order dated 13.2.2006, passed by the special Judge, S.C./S.T. Act, Banda has been filed as Annexure-4 to this bail application.

2. The prosecution allegations, as is perceptable from the F.I.R. (Annexure-1) are that the informant Babu Lal had two sons Ashok and Naresh who used to help the poor and downtrodden. Ram Suresh Yadav (the present applicant) a co-villager is an anti-social element who indulge into assault to show his muscle power and used to oppose the aforesaid sons Ashok and Naresh. On 26.10.2005 Naresh aforesaid was

returning from his field at 3.30 p.m., when he was surrounded by Ram Suresh Yadav (present applicant), Bachha Yadav, Arvind Yadav and one more person armed with country-made pistol and lathis near the house of Prajapati, vituperising by caste abuses. Naresh raised hue and cry, which attracted the informant Babu Lal and his son Ashok. Naresh no sooner also took to his heels towards the informant his father, but unfortunately fell down in the way because of the bamboo wooden kept in the way. Ram Suresh, the applicant, shot at Naresh from his country-made pistol and rest of the three assailants belaboured him with lathi. The present applicant Ram Suresh also made two other shots as well. This incident was witnessed by many co-villagers and neighbors. Naresh was rushed to the District Hospital Banda soon after the incident, from where he was referred to Kanpur. The informant got the F.I.R. scribed from Badri Vishal Trivedi and after covering a distance of 8 km. lodged it on the same day at 9.30 a.m. as Crime No. 230/05, u/s 307/504, I.P.C. and Section 3(2)(5) S.C./S.T. Act, P.S. Girwan, district Banda. Subsequently, injured Naresh lost his life and therefore, the offence was converted u/s 302, I.P.C. The post mortem report (Annexure-3) of the deceased dated 29.10.2005 indicates that he had sustained two injuries and the cause of his death was haemorrhage and shock due to ante mortem injuries. He has sustained the fracture of temporal and parietal bone and his membranes were lacerated.

3. I have heard Sri V. P. Srivastava, learned senior counsel assisted by Sri B. K. Tripathi, learned Counsel for the applicant, Sri R. B. Sahai, for Dr. S. K. Vaswani and learned A.G.A.

4. During the course of argument it was contended by the learned Counsel for the applicant that the deceased had not sustained any firearm injury as the Dr. S. K. Vaswani had given a statement before the police that he had mentioned gun shot injury at the behest of the police and the prosecution. On the aforesaid statement given by learned Counsel for the applicant, he was directed to file a supplementary-affidavit, which was filed by Sri B. K. Tripathi on 17.5.2006. Alongwith the supplementary-affidavit he has appended the copy of the statement of the informant recorded u/s 161, Cr. P.C., the medical report of the injured prepared by Dr. Vaswani aforesaid. The information regarding the death of the injured on 28.10.2005, statement of Vijai Singh, Mathura, Ram Suresh the applicant, copy of the post mortem report as well as the statement of Dr. S. K. Vaswani of District Hospital Banda (Annexure-4). In the said statement the aforesaid doctor has stated thus:

The deceased Naresh was brought for medical examination on 26.10.2005 at 4 p.m. and he was examined by me. The injured was not in serious condition and the people who accompanying the injured were saying that the deceased got injured from firearm made by country-made pistol on which I in hurry noted the both the injuries to be gun shot.... Since the condition of the injured Naresh started being serious I immediately referred him to Kanpur Hospital. It is possible that firearm injuries may not be there and because the condition was serious, injury report was

prepared in hurried manner.

5. This statement of the doctor was given to the police on 23.1.2006. Dr. Vaswani was noticed by this Court on 10.8.2006 to show cause why he should not be declared to be unfit for State Medical Health Service and be not removed from service. 8.9.2006 was the date fixed, for his personal appearance in this Court. Dr. Vaswani had put his appearance in the court and he has filed counter-affidavit through Sri Sushil Chandra Srivastava advocate on 28.9.2006. In counter-affidavit Dr. Vaswani aforesaid has stated in para 9 that "the injury report was prepared by me on the basis what ever he found medically examined Suresh and not in a bad or ill motive." It is also stated in the said paragraph "it is made clear that Dr. Vaswani has not given any statement before the Investigating Officer and has not mentioned the gun-shot injury at the instance of prosecution." This paragraph is sworn on his personal knowledge. Dr. Vaswani has also filed a supplementary counter-affidavit. In para 8 of the said supplementary counter-affidavit he has admitted giving the statement to the Investigating Officer but given an explanation that the Investigating Officer had recorded the statement of the deponent in his own version, which suits prosecution story. He further testified that he never stated before the Investigating Officer that above mentioned gun-shot wound was mentioned at the instance of people present at the time of preparation of injury report. He has further testified that no X-Ray was got done by the injured and that there was a possibility that medical officer performing post mortem may have missed bullets as often happens. In para 16 of the supplementary counter-affidavit Dr. Vaswani has reiterated that he has never given any statement as recorded by the Investigating Officer. In para 17 of the said supplementary-affidavit, Dr. Vaswani has denied giving any statement to the Investigating Officer u/s 161, Cr. P.C. the same averment has been reiterated in para 21 of the supplementary-affidavit.

6. From the facts mentioned above it is absolutely clear that investigation of the case is a tainted one and Dr. S. K. Vaswani is not a fair Medical Officer. He had made contradictory statements regarding the nature of the injuries of the deceased, which were extremely important to budge the veracity of the prosecution version. In this view of the matter I consider it appropriate to direct the Secretary, Medical Health Service Government of U.P., Lucknow to put Dr. S. K. Vaswani immediately under suspension and to institute an inquiry against him to find out the truth of the matter. I also direct the I.G. (Police) Banda to suspend the aforesaid Investigating Officer of the Crime No. 230/05 u/s 302/504, I.P.C. and Section 3(2)(5) S.C./S.T. Act, P.S. Girwan, district Banda and institute an inquiry against him for tampering with the record of the aforesaid crime. Both the aforesaid persons are directed to get the inquiry completed within a period of three months from the date of the production of certified copy of this order before them. They are further directed to entrust the inquiry to an honest person of their department. Put up this application for further orders after the expiry of aforesaid three months on 15.2.2007 as part heard.

7. Till that date the I.G. (police) Banda as well as Secretary, Medical and Health Services, U.P. Lucknow are directed to intimate this Court the result of the inquiries which have been directed by this order.

8. Let the copy of this order be sent to the I.G. (Police) Banda as well as Secretary, Medical and Health services, U.P. Lucknow forthwith for their information and necessary action.

9. So far as the bail prayer of the applicant is concerned, I think it appropriate to release the applicant on parole for a period of three months starting from 17.11.2006.

10. Let the applicant Ram Suresh be released on parole on his furnishing a personal bond of Rs. 50,000 and two sureties each in the like amount to the satisfaction of court concerned. One of the two sureties will be of his near kith and kin. The applicant is directed to report to the Police Station concerned once in a month at the date and time to be fixed by the officer in charge of the police station concerned. The applicant is further directed not to leave district Banda without permission of the C.J.M., Banda and intimation to the trial court concerned. The applicant is directed to surrender before the C.J.M., Banda on 16.2.2007. C.J.M., Banda is directed to intimate the factum of his surrender to this Court immediately thereafter.