

**(2004) 08 AHC CK 0313**

**Allahabad High Court**

**Case No:** Criminal Appeal No. 889 of 1981

Natthu and Others (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Aug. 9, 2004

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 307

**Citation:** (2004) 3 ACR 3033

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

**Bench:** Division Bench

**Advocate:** P.N. Misra, A.N. Shah, N.P. Midha, A. Misra and Y.K. Shukla, for the Appellant;  
Sudhir Kumar Agarwal and A.K. Dwivedi, A.G.A., for the Respondent

**Final Decision:** Partly Allowed

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### **Judgement**

M.C. Jain, J.

Six persons were tried in S.T. No. 517 of 1980 before IIIrd Additional Sessions Judge, Etah. They were: (1) Natthu, (2) Ram Ratan, (3) Tej Singh, (4) Dan Sahai, (5) Brijpal and (6) Rishipal. By judgment dated 22.4.1981, Natthu has been convicted u/s 148, I.P.C. with a sentence of two years rigorous imprisonment, u/s 302, I.P.C. with a sentence of life imprisonment and u/s 307 read with Section 149, I.P.C. with a sentence of ten years" rigorous imprisonment. Dan Sahai has been convicted u/s 147, I.P.C. with a sentence of one year"s rigorous imprisonment, u/s 302 read with Section 149, I.P.C. with a sentence of life imprisonment and u/s 307 read with Section 149, I.P.C. with sentence of ten year"s rigorous imprisonment. The remaining four Appellants have been convicted u/s 148, I.P.C. with a sentence of two years" rigorous imprisonment, u/s 302 read with Section 149, I.P.C. with a sentence of life imprisonment and u/s 307 read with Section 149, I.P.C. with a sentence of ten years" rigorous imprisonment. All the sentences have been ordered to run concurrently. The Appellants have preferred this appeal. Out of them, Tej Singh son of Mani Ram is shephard by caste and the remaining five are ahirs allegedly in

league with the former. The incident took place in the night intervening 23/24th October, 1979 at about 10 p.m. in village Gariha, a hamlet of Sanodhi, police station Sikandarpur, District Etah about 1 miles away from the concerned police station. The F.I.R. was lodged on 24.10.1979 by Babu Ram injured P.W. 1. Kali Charan a boy aged about 11 years, died in the incident. The prosecution case as per the F.I.R. and evidence adduced in the Court, briefly stated, was that earlier to the incident, the accused Tej Singh's father Mani Ram and complainant Babu Ram's cousin Bhudev had purchased some land from one Deep Singh Thakur. In respect thereof some litigation had taken place. Babu Ram was helping his cousin Bhudev and, therefore, his relations with the accused-Appellants became strained. Pitam Singh father of accused Dan Sahai and Brijpal had secured conviction of the complainant's brother Ganga Deen and Shanker in a criminal case. However, the appeal was allowed. The accused Rishi Pal's father Siya Ram had also involved the complainant's son Lala Ram P.W. 4 and complainant's brother Ganga Din in a dacoity case prior to this incident. Thus, relations between the two sides were inimical. In between the fateful night, the complainant Babu Ram P.W. 1 was lying in his gher. His son Lala Ram P.W. 4, father's sister's son Balwant and nephew Netra Pal were also there. A lamp of kerosene was glowing. At about 10 p.m., the accused persons appeared there from eastern side. Natthu, Tej Singh and Rishi Pal were armed with guns and Ram Ratan and Brijpal had countrymade pistols whereas Dan Sahai had a lathi with him. On alarm being raised by the complainant, Jhari P.W. 3, Netrapal, Ganga Din, Kali Charan, Maiku and Latoori rushed to the scene. The last two had torches with them. In the meantime, Rishipal fired a shot on Lala Ram and Natthu at Kali Charan. Brij Pal injured the complainant with the butt of his pistol. The remaining accused also indulged in firing and beating with the butts. As a result, the complainant Babu Ram P.W. 1, Jhari P.W. 3, Lala Ram P.W. 4, Ganga Din, Netra Pal and Kali Charan were injured. As the condition of Kali Charan (since deceased) and Lala Ram P.W. 4 was serious, a bullock cart was arranged to carry them to Patiali Hospital. On way, Kali Charan breathed his last near village Nardauli. The deceased and other injured, except the complainant and Netrapal, were taken to Patiali Hospital and these two persons came to police station to lodge the F.I.R.

2. The F.I.R. was dictated by Babu Ram to Raj Pal and it was lodged at the police station at 8.45 a.m. the next morning. A case was registered. The investigation followed as usual. After completion of necessary formalities and preparation of inquest report the dead body of Kali Charan was sent for post-mortem.

3. Dr. P. K. Jain, P.W. 6 performed autopsy on the dead body of Kali Charan on 25.10.1979 at 12.30 p.m. The deceased was aged about 11 years and about 1-1/4 day had passed since he died. The following ante-mortem injuries were found on his person:

(1) Firearm wound of entry 2 cm. x 2 cm. x through and through on the upper part of left arm outer side. The margins were inverted and lacerated. No blackening was

present.

(2) Firearm wound of exit 6 cm. ? 4 cm. in continuation of injury No. 1. Margins were inverted and lacerated and the limb was separated completely, only attached by the tag of skin.

(3) Contusion 5 cm. ? 3 cm. in the left mid axillary line 8 cm. below the left axilla.

4. The cause of death was shock and haemorrhage resulting from ante-mortem injuries.

5. The same Doctor examined the injuries of Ganga Din, Jhari and Lala Ram on 24.10.1979.

6. On the person of Ganga Din, the following injury was found:

Multiple firearm wounds of entry 1/2 cm. ? 1/4 cm. ? skin deep on the front and inner side of thigh. No blackening present. The direction was transversed and laterally.

7. On the person of Lala Ram, the following injuries were found:

Multiple firearm wounds of entry from 1/4 cm. ? 1/4 cm. to 1 cm. ? 1/2 cm. Some were tissue deep and some were cavity deep on the upper part of abdomen in an area of 15 cm. ? 5 cm. Margins were inverted and lacerated. Blackening present. Grazing present in few. The direction was from left to right and transverse.

8. On the person of Jhari, the following injuries were found:

(1) Lacerated wound 6 cm. ? 6 cm. at the base of left upper thumb. The thumb was amputated, separated and only attached by the palmer skin. No blackening present.

(2) Multiple firearm wounds of entry 1/4 cm. ? 1/4 cm. ? tissue deep on the front of left forearm lower half. No blackening present.

(3) Firearm wound of entry 1/4 cm. ? 1/4 cm. ? skin deep on the left side of abdomen upper part.

(4) Firearm wound of entry 1/4 cm. ? 1/4 cm. ? skin deep on the front of right thigh.

9. In the opinion of the Doctor, the injuries of Ganga Din and Jhari were simple except injury No. 1 of Jhari which was grievous. The injury of Lala Ram was kept under observation and X-ray was advised regarding his injury. For confirmation of pellets, X-ray of the injury of Ganga Din was also advised.

10. The injuries of Netrapal and Babu Ram were medically examined at 4.30 p.m. and 4.40 p.m. respectively on 24.10.1979 at Patiali Hospital.

11. On the person of Netrapal the following injury was found:

A lacerated wound 2.5 cm. x 1 cm. x scalp deep on frontal region. 11 cm. above the root of nose. The direction was transverse.

12. On the person of Babu Ram, the following injury was found:

Contused swelling on left side of the chest 7 cm. x 3 cm. above the 2nd rib extending from the midline. The direction was transverse.

13. The Doctor was of the opinion that the injuries of Netra Pal and Babu Ram were simple caused by blunt object and about one day old.

14. The Investigating Officer was S.I. Charat Singh P.W. 5, who recorded the statements of the witnesses, drew site plan, prepared the seizure memos and performed other activities relating to investigation.

15. The defence was of denial and false implication on account of enmity. The version of Tej Singh was that his father Mani Ram had litigated with Bhudeo who had been helped by the complainant. According to the accused Natthu, Ram Ratan, Dan Sahai and Brijpal, Peetam Singh (elder uncle of Nathu and Ram Ratan and father of Dan Sahai and Brij Pal) had started a criminal case successfully against the complainant and his brother Ganga Din. Peetam Singh had refused to concede to their request for a compromise, hence they were falsely entangled. Likewise, Rishipal's father Siya Ram had involved complainant's brother Ganga Din and son Lala Ram in a dacoity case and that was the cause of his false implication.

16. Apart from formal and medical evidence, the ocular testimony relied upon by the prosecution was of the complainant Babu Ram P.W. 1 (injured), Laturi P.W. 2, Jhari P.W. 3 (injured) and Lala Ram P.W. 4 (injured). Out of them Laturi P.W. 2 was an unconnected person but he turned hostile and did not support the prosecution case.

17. The evidence adduced by the prosecution found favour with the learned trial court which recorded the judgment impugned by the Appellants before this Court through this appeal.

18. We have heard Sri. P. N. Misra, learned senior advocate from the side of the Appellants and Sri Sudhir Kumar Agarwal, learned A.G.A., from the side of the State in opposition. The submissions of the learned Counsel for the Appellants in nutshell are that there was no firm motive on the part of the accused-Appellants to commit this crime, that because of old enmity there was greater possibility of the accused-Appellants having been falsely implicated by the prosecution ; that it was a night incident ; that actually a dacoity had taken place and they were implicated owing to enmity and that there was no independent witness. The prosecution case was also assailed to be doubtful on the basis of stomach condition of the deceased. Learned A.G.A., however, has countered these submissions on the basis of the reasoning adopted by the learned trial Judge, finding the prosecution evidence to be trustworthy to prove the guilt of the accused persons. In the subsequent discussion,

we intend to deal with the relevant aspects having bearing on the right decision of the appeal.

19. The ocular account of the incident has been perused by us. The complainant Babu Ram P.W. 1 (injured) and two other injured witnesses, namely, Jhari P.W. 3 and Lala Ram P.W. 4. Jhari is brother of Babu Ram, whereas Lala Ram is his son. The deceased was the nephew of Babu Ram. Laturi P.W. 2 was examined as an independent witness who was unconnected with the family of the complainant. Though he was declared hostile because he denied to have recognised any of the culprits, but he, too, supported the factum of the incident that at about 10 p.m., he was sleeping at his house and on hearing shouts emanating from the side of the house of Babu Ram, he had rushed there with a torch. According to him, he saw the back of 5-6 persons but could not identify them. Obviously, he, too, extended corroboration as regards the place, date and time of occurrence and the participants being 5-6 in number. Babu Ram P.W. 1, Jhari P.W. 3 and Lala Ram P.W. 4 being injured witnesses and inmates of the house, their presence at the time of the incident is beyond question. It is manifest from the testimony of these witnesses that light was available for recognition of the culprits who were known to them from before. A lamp was glowing and upon hue and cry being raised, Laturi P.W. 2 and Maiku had also come with their torches. Laturi P.W. 2, though not identifying the culprits, spoke about the torch being available with him. Babu Ram P.W. 1 and Jhari P.W. 3 have spoken about the lamp light and also about the torches of the approaching witnesses Laturi P.W. 2 and Maiku. Lala Ram P.W. 4 referred to the lamp light and torches of the raiders. The Investigating Officer Charan Singh P.W. 5 had seized the lamp as well as torches. There was nothing unusual if a glowing lamp was there in night time. The culprits could also not have operated in pitched darkness and the availability of flashing torches with them was also a source of light facilitating their recognition by the witnesses to whom they were known from before. It was there in the evidence of Babu Ram P.W. 1 that Rishi Pal had shot at Lala Ram and Natthu at Kali Charan. He himself had been hit by the butt of the firearm by Brij Pal. Jhari P.W. 3 corroborated him in every way and that he had been hit by the shots of Tej Singh, Gangadeen by the shots of Ram Ratan and Netrapal by the lathi of Dan Sahai. Lala Ram P.W. 4 supported the firing on him by Rishi Pal, on Kali Charan by Natthu and on Jhari by Tej Singh.

20. The crux of the matter is that the participation of all the six accused-Appellants in the crime is established with specification that Kali Charan was shot dead by Natthu. There are no noticeable variations in the testimonial assertions of the injured eye-witnesses who are the most natural witnesses of the incident. It goes without saying that when many persons look at an event, they have their own power of vision and narration to reckon with and they recount the same in their own way.

21. On going through the evidence carefully, we are of the firm opinion that the prosecution by cogent and convincing evidence of the three injured witnesses

succeeded to prove the factum, date and time of the occurrence as also the complicity of the six accused-Appellants in the incident. It may be stated at the risk of repetition that barring the recognition of the culprits, the time, date and place of incident is corroborated even by the testimony of hostile witness Laturi P.W. 2. The conclusion of the learned lower court on these points does not warrant any interference.

22. It is not possible to attach any importance to the argument of the learned Counsel for the Appellants that there was no immediate motive for the accused-Appellants to join hands and commit this crime. Vagaries of enmity play strange ways. The motive is hidden in the mind of a man and the prosecution can only surface the background known to it. The prosecution has brought on record the previous background and nothing more could be expected from it. Further, when there is direct evidence regarding commission of crime by a particular person(s), the motive loses much of its significance. It is not digestible that the prosecution side would let go scot-free the real culprits and falsely substitute the accused-Appellants. It is merely a stock argument that the accused-Appellants had been falsely implicated. The incident took place at about 10 p.m. at the house of the complainant and the examined eye-witnesses were the inmates of the house. They were the most natural witnesses. It does not at all adversely affect the prosecution case that no other independent witness supported the commission of crime by the accused-Appellants.

23. The argument of the learned Counsel for the Appellants cannot be accepted that it was actually an incident of dacoity twisted by the prosecution side. He tried to support this argument by referring to stray parts of the statements of the witnesses. Babu Ram P.W. 1 admitted at first that after the incident he had gone inside the house and found the articles scattered. He then withdrew his words and disowned his entry inside the house. Jhari P.W. 3 stated that the accused had harmed them. Be it taken dacoity or anything else. Lala Ram P.W. 4 referred to a commotion after the raid. We do not think that these parts of the statements of the witnesses justify the inference that a dacoity had taken place. If the dacoits had come, they would have definitely indulged in looting and in that situation, the complainant would have had no reason to conceal the factum of dacoity and to be contented by alleging assault only. In fact, the complainant was guided by truth not to further aggravate the seriousness of the crime, which he could have very well decorated with plunder as well as murder-actual and attempted. He did nothing of the kind. This feature of the prosecution case rather militates against the alleged false implication of the accused-Appellants. The entry of the complainant and others inside the house after the incident was a natural human behaviour. As many as six persons had been injured by the firearm and blunt force. In order to console the women folk and ascertain their welfare, they were bound to go inside by natural instinct. The incident like the present one disbalances the whole domestic scenario. It is also not surprising that the ladies inside the house, out of perplexity of mind, would have

disturbed the equations and positioning of the household effects, a scene making out semblance of some looting. The statement of Jhari P.W. 3 as to the incident being presumed as dacoity or something else indicated the innocuous psychology of a victim. In our opinion, the defence case of dacoity is completely exploded.

24. The learned Counsel for the Appellants urged that the stomach condition of the deceased Kali Charan aged about 11 years was found empty and as per the prosecution, the incident took place at 10 p.m. According to him, had it been so, the stomach of the deceased would not have been found empty. Dr. P. K. Jain P.W. 6, who conducted autopsy on the dead body of the deceased on 25.10.1979 at 12.30 p.m., gave the probable time of death about 1-1/4 day. However, in his testimony before the Court, he stated that there could be a difference of 3-4 hours on either side. The Doctor accepted the suggestion that injuries could also possibly be sustained at about 2.30 or 3 a.m. in the night. We do not think that the stomach condition of the deceased can be taken to be a sure guide to determine the time of death, particularly when there is no evidence to indicate as to at what time he had taken the dinner. The speculative probability of the time of sustaining injury as per the suggestion made to the Doctor and accepted by him cannot overshadow the effect of convincing evidence that the incident had taken place at about 10 p.m. In our view, we are fortified by a decision of the Supreme Court in the case of *Ram Bali v. State of U. P.* (18) 2004 ACC 79.

25. In view of the above discussion, we are led to the conclusion that the accused-Appellants committed this crime. Five of them were armed with firearms and one of them (Dan Sahai) had a lathi. They used their weapons in assaulting six persons, Babu Ram, Jhari, Lala Ram, Ganga Deen, Netrapal and Kali Charan. Out of them Kali Charan died.

26. Now comes the consideration of the question as to what offence(s) came to be committed by the accused-Appellants. The evidence is there on record that there was a clique of all the accused-Appellants. The evidence is also there on record that there was bad blood between the two sides from before, the background having been narrated earlier. It has also consistently come in the evidence of the prosecution that Kali Charan was shot dead by the accused-Appellant Natthu. He sustained a single gunshot wound of entry with an exit wound which turned out to be fatal. Lala Ram, Ganga Deen and Jhari had sustained firearm injuries whereas Babu Ram and Netra Pal had been hit by blunt force.

27. The victims were unarmed and out of the six accused Appellants, five had firearms. Despite that, instead of maximum use of firearms, some of the victims were assaulted with butts of firearm. Most of the injuries of the injured persons were on non-vital parts. It is an indicator that the intention to kill was not there. The common object of unlawful assembly formed by them was to cause grievous hurt, and not to commit the murder. The circumstances of the case manifest that the common object of the unlawful assembly was only to establish their upper edge

over the complainant and his family by causing grievous injuries to them. They wanted to demonstrate their muscle power over them to force them into submission and not to raise their heads against them. Natthu accused-Appellant who shot dead the innocent lad Kali Charan aged about 11-12 years, exceeded the common object of the unlawful assembly by murdering him and it was his individual act for which he is liable to be convicted u/s 302, I.P.C. simpliciter.

28. For the foregoing discussions, we partly allow this appeal in the following way:

(1) The accused-Appellant Natthu is convicted u/s 302, I.P.C. simpliciter with a sentence of life imprisonment. He is also convicted u/s 326 read with Section 149, I.P.C. with a sentence of 3 years" rigorous imprisonment and a fine of Rs. 5,000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.

(2) The conviction and sentence of the accused-Appellants Ram Ratan, Tej Singh, Brij Pal, Dan Sahai and Rishi Pal u/s 302 read with Section 149, I.P.C. are set aside. Instead, they are convicted u/s 326 read with Section 149, I.P.C. For the said offence, each of them is sentenced to undergo rigorous imprisonment for three years and a sentence of fine of Rs. 5,000. In default of payment of fine each of them shall undergo further rigorous imprisonment of one year.

(3) The accused-Appellant Dan Sahai is convicted u/s 147, I.P.C. and sentenced to undergo rigorous imprisonment for one year.

(4) The accused-Appellants Nathoo, Ram Ratan, Tej Singh, Brij Pal and Rishi Pal are further convicted u/s 148, I.P.C. with a sentence of two years" rigorous imprisonment.

(5) The substantive sentences of imprisonment of the accused-Appellants shall run concurrently but the sentence awarded in default of payment of fine shall be undergone separately.

29. The Appellants are on bail. Chief Judicial Magistrate, Etah, shall cause them to be arrested and lodged in jail to serve out the sentences passed against them.

30. The judgment be certified to the lower court and compliance be reported to this Court within two months from the date of receipt of a copy of this order along with the record which shall be sent to the court below forthwith.