

(2002) 09 AHC CK 0233**Allahabad High Court****Case No:** Government Appal No. 3029 of 1998

State of U.P.

APPELLANT

Vs

Krishna Pal and Others

RESPONDENT

Date of Decision: Sept. 27, 2002**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 300

Citation: (2003) CriLJ 1115**Hon'ble Judges:** Y.R. Tripathi, J; M.C. Jain, J**Bench:** Division Bench**Advocate:** A.G.A, for the Appellant; Sanjay Kumar Jaiswal, for the Respondent**Final Decision:** Dismissed**Judgement**

M.C. Jain, J.

This appeal has been filed by the State against the judgment and order dated 4-6-1998 passed by Sri R. P. Srivastava, the then IV Addl. Sessions Judge, Meerut in Sessions Trial No. 171 of 1991, whereby he acquitted the respondents No. 1 to 5, namely Krishna Pal, Satpal, Dhanpal, Rajesh and Ranbir of the charges under Sections 147 and 302, 1.P.C. read with section 149, I. P. C. for which they were tried.

2. The matter involved the murder of two persons, namely Jaipal and his son Devendra aged about 12 years. The murders were allegedly committed by the accused-respondents, after forming unlawful assembly, on 4-11-1988 at about 4 P. M. in village Biharipur, P. S. Baghpat, then forming part of District Meerut. The F. I. R. had been lodged by Raghbir-brother of the deceased Jaipal on the same day at 7.15 P. M. The distance of the police station from the place of occurrence is about 13 Kms. The informant was not an eye-witness of the incident, but was informed of the same in his village Wall by his niece Rekha. She is the daughter of deceased Jaipal. As per the narration made in the F. I. R. about 1 1/2 months before the incident, Krishna Pal son of the sister of the informant and the son in law of the respondent

Satpal had gone to Baraut to witness a movie. The wrist watch of Krishna Pal had been snatched away by the son-in-law of Satpal. Satish son of the deceased Jaipal remonstrated in this regard which resulted in altercation and exchange of hot words. On the fateful day at about 4 P. M., the accused-respondents appeared at the house of the deceased and objected for the son-in-law of one of them Satpal having been rebuked over the wrist watch issue. They murdered Jaipal and his son Devendra, using firearms as well as sharp edged weapons. Satpal and Dhanpal accused-respondents are real brothers. The case was registered and the investigation followed. Thereafter, the accused respondents were booked and put on trial which resulted in their acquittal.

3. It would be relevant to state here that the post mortem over the dead bodies of the deceased Devendra and his father Jaipal had been conducted on 5-11-1988 at 11.15 A. M. and 12.15 P. M. respectively. Devendra who was aged about 12 years sustained as many as seven ante-mortem injuries out of which five incised wounds besides his neck being severed. The head was missing. Jaipal who was aged about 50 years sustained a number of injuries including gunshot wound of entry in the abdomen, 8 incised wounds, 2 punctured wounds and 12 stab wounds on different parts of his body. The perusal of the post-mortem reports indicates that the two victims were done to death most brutally.

4. We have heard learned A. G. A. from the side of the State in support of the appeal and learned counsel representing the accused respondents. We have also carefully gone through the record including the evidence of the case. The submission of the learned A. G. A. is that the acquittal has been recorded on insufficient and untenable grounds. It has been urged that the case of the prosecution stood proved to the hilt by the evidence adduced on record.

5. On thoughtful consideration of the material and evidence on record, we are of the opinion that it is not at all, possible to reverse the finding of acquittal recorded by the trial Court which is perfectly justified; We would do well to record the reasons for our endorsing the judgment of acquittal re-corded by the lower Court.

6. It is pertinent to state that the case hinged on the testimony of PW1 Smt Mahendri wife of the deceased Jaipal and PW 3 Rekha daughter of the deceased Jaipal as PW 2. Raghbir, who is the brother of deceased Jaipal, is not an eye-witness. He was allegedly informed of the incident in his village Wali by his niece Rekha on the basis of which "he lodged the F. I. R. The weapons of the accused-respondents have not been disclosed in the F. I. R., though the statement of PW 3 Rekha is that she: had narrated the entire incident to her uncle (in formant).

7. As per the testimony of PW 1 Smt. Mahendri, Krishna Pal was armed with country-made pistol, Satpal with Gandasa, Rejesh with Pharsa, Ranbir with spear and gun and Dhanpal with Gandasa and country-made pistol. However, P.W. 3 Rekha has not assigned gun to Ranbir and country-made pistol to Dhanpal. Any way,

non-disclosure of the weapons of the accused-respondents in the F. I. R, and the above referred minor contradiction with regard to the same surfacing from the statements of PW1 Smt. Mahendri and PW 3 Rekha can be ignored, provided their evidence stands the test of reliability on over all consideration. The sad and disturbing feature of the case is that they have contradicted each other on material points and at places, their own evidence is self conflicting leading nowhere in the direction of proving the accused-respondents to be guilty. It is further to be noted that PW3 Rekha has not named accused-respondent Rajesh at all. She has clearly stated that he was not all present at the spot. According to PW1 Smt. Mahendri, the accused-respondents, immediately after appearing at her house, started threatening her husband who went up stairs on the roof. The accused respondents followed him on the roof, but before doing that, they confined her and her children in a room on the ground floor. She witnessed the incident from the grill. On the roof, Krishna Pal shot her husband and then Satpal and Dhanpal rained Gandasa blows on him. The accused respondents then came down the stairs and broke open the door of the room in which she and her children had been confined. Krishna Pal then took Gandasa from Satpal and severed the neck of her son Devendra. Krishna Pal also gave Cut blows on his hands and feet. The accused-respondents then brought down the dead body of her husband from the roof down stairs and ran away after throwing both the dead bodies on the Kharanja in front of her house.

8. We note that at another place, she stated that while shutting her inside the room the accused-respondents had blind folded her. She contradicted herself in very next sentence that she had not been blind folded at that time. Her statement is also to the effect that Krishana Pal had opened two shots on her son Devendra and one shot had been received by him in his chest. The truth of the matter is that as per the post-mortem report, Devendra did not sustain any fire arm injury. It is obvious that the version of PW 1 Smt. Mahendri is in conflict with medical evidence.

9. She also stated that respondent Ranbir had struck spear in her own leg; Krishan Pal had assaulted her daughter Rekha with spear, her another daughter Pramila was also assaulted by Krishna Pal with Gandasa which caused cut injury in her head. Rekha, too, had bled on receiving spear blow from Krishna Pal in her leg. The truth of the matter is that P.W. 3 Rekha has not stated about any injury having been caused to her and her sister Pramila by any of the accused-respondents, though her mother had been assaulted. The statement of P.W. 3 Rekha is that the accused-respondents did not cause any injury to her. There is no medical examination report in respect of any of them. The statements of P.W. 1 Smt. Mahendri and P.W. 3 Rekha are also not in tune as to whether they, Devendra and Pramila had been shut inside a room or otherwise. The statement of P.W. 3 Rekha is also to the effect that two shots had been fired on her brother out of them, one had hit him in the abdomen and the other in the chest.

10. The narration made by P.W. 1 Smt. Mahendri also discloses that Jaipal himself was a person of criminal antecedents. He had a trail of criminal history behind him. In a case u/s 307, I.P.C. he had been convicted for seven years imprisonment. He had also been convicted in four or five other cases and all such cases related to Biharipur where he resided. She herself was an accused in the case of attempt to murder of Kali Ram. She admitted that Dhanpal's father had appeared as prosecution witness in that case. It should be recalled that Dhanpal and Satpal accused-respondents are real brothers. Thus, it appears that there was had blood between her family and the family of these two accused-respondents from before which could form basis of their false implication in this case.

11. To cap it all, the entire prosecution case came to be disturbed by the testimony of P.W. 3 Rekha at the end of her cross-examination. She admitted that a dacoity had taken place at her house the same night in which her father and brother had been murdered. Her version is that the dacoity had been committed at her house twice, once earlier to the present incident and for the second time in this incident in which his father and brother were murdered and that she had identified four dacoits. It should be stated at the risk of repetition that she did not name the accused-respondent Rajesh. Thus, it is clearly relateable on careful consideration of her entire testimony that it was an incident of dacoity in which her father and brother were murdered.

12. It has been stated P.W. 1 Smt. Mahendri also that dacoity took place at her house thrice. Two incidents of dacoity had taken place before this incident and third one took place in the night of present incident itself. Her version is that the police arrived and took away two dead bodies. Immediately thereafter, these five accused-respondents came to her house again and committed dacoity for 2-3 hours. The police then came next day also. She has gone to the extent of saying that during commission of dacoity, the dacoits threw her down from the roof, causing fractures in her hands and legs. It is, however, a fact that there is no medical examination report regarding her as we have stated a little earlier also. Further, no report regarding dacoity (which allegedly took place in the same night after these murders) was made at the police station.

13. Another part of the testimony of P.W. 3 Rekha is that when she was going to village Wall to inform her uncle after about an hour of the incident, the accused-respondents Ranbir and Satpal met her at the culvert of the canal and they were coming behind her. They neither abused her nor caused by hurt to her at that time. Obviously, it sounds to be improbable that these two, who had committed serious crime at a little before by murdering her father and brother, would have allowed her to go unhurt despite finding her a little after the incident. In fact, it is against the inherent probabilities of the situation that the accused-respondents, though murdering Jaipal and his son Devendra in a most diabolical manner, would have spared unhurt other members of the family readily available at the place of the

incident. The brutal way in which two victims were murdered is indicative of deep seated hatred and vengeance hidden in the heart(s) of perpetrator(s) of the crime, considering this aspect of the matter as well that the neck of the innocent boy of aged about 12 years was completely severed and taken away.

14. In view of the above discussion relating to the important aspects of the case, we veer around the conclusion that the prosecution evidence is wholly meagre contradictory and self conflicting. It is wholly incapable of proving the happening of the incident as alleged and the accused-respondents to be guilty therefore. Our impression is that the prosecution has projected a fabricated version of the incident right from the beginning. It is a popular adage that two falsehoods fight between themselves and it appears to be the reason that the testimonial assertions of P.W. 1 Smt. Mahendri and P.W. 3 Rekha are self conflicting in addition of being contradictory to each other. It appears that it was a case of dacoity by unknown persons in which the father and son were brutally done to death. We are further of the view that because of suspicion or enmity, the accused-respondents were nominated as the culprits. Instead of investigating the case on proper lines, the police assumed a passive role to lessen its burden. It appears that the F.I.R. was also ante-timed. Though the dacoity took place in the night, but this incident was shown to have taken place at about 4 P.M. The possibility is very much there that the local police acted as catalyst in the distortion of the reality by projecting this incident to be that of murder by nominated persons, supposedly inimical to the victim side or suspected to be so. To us, the trial Judge was justified in acquitting the accused-respondents and the impugned judgment recorded by him cannot be reversed.

15. Resultantly, we find no merit in the appeal filed by the State and we hereby dismiss the same.

16. Let copy of the judgment along with record of the case be immediately sent to the lower Court for incorporating necessary entries in the concerned register under intimation to the Court within one month.