# State Of U.P. vs Brahma Das on 19 August, 1986

## Equivalent citations: AIR1986SC1769, 1986(34)BLJR713, 1986CRILJ1732, 1986(3)CRIMES369(SC), 1986(2)SCALE340, (1986)4SCC93, AIR 1986 SUPREME COURT 1769, 1986 (4) SCC 93, 1986 CRILR(SC MAH GUJ) 410, (1986) JT 209 (SC), 1986 SC CRI R 343, 1986 (2) CRILC 466, 1986 BLJR 713, 1986 (4) SUPREME 77, 1986 (3) CRIMES 369, 1986 SCC(CRI) 368, (1986) ALLCRIC 473, (1986) ALLCRIR 555

## Author: M.P. Thakkar

## Bench: M.P. Thakkar, S. Natarajan

JUDGMENT

M.P. THAKKAR, J.

1. Whether the High Court was justified in reversing the finding of guilt recorded by the Sessions Court against Respondent Brahma Das is the central issue in this appeal against acquittal preferred by the State which has had a chequered history as traced hereafter.

2. Respondent Brahma Das and four others were found guilty of an offence under Section 302 IPC read with Section 149 IPC for having committed the murder of one Ranjit Ram Pande at about 5.00 P.M. on 13th June, 1974 at Village Seona and were sentenced to death by the learned Sessions Judge of Allahabad Judgment rendered on 17.6.1975 in ST No. TA 499 of 1974. They were also convicted for other offences Under Sections 147, 148 and 325 IPC and sentenced to various terms of imprisonment. The accused appealed. The High Court of Allahabad which heard the appeals along with the confirmation proceedings, came to the conclusion that the case against the accused had not been established beyond reasonable doubt and reversed the order of conviction and sentence rendered by the Sessions Court. That State of U.P. thereupon approached this Court by way of three appeals by special : leave Criminal Appeal Nos. 45, 46 and 47 of 1977.

3. this Court allowed these appeals upon being satisfied that the view taken by the High Court was unreasonable and that the High Court was clearly in error in interfering with the judgment of the Sessions Court985 S.C.C. Vol. 3 P. 703 delivered on 2.8.1985 per Fazal Ali and Varadarajan,. In so far as conviction was concerned, this Court restored the conviction for an offence under Section 302/149 I.P.C. So far as the sentence was concerned, this Court imposed a sentence of imprisonment for life in place of the sentence of death imposed by the Sessions Court. One of the respondents, Brahma Das, applied for a review of this order on the ground that the counsel who had appeared in the Supremo Court and argued the matter had not been authorised to appear for him

and therefore had no authority to argue the matter on his behalf. Having regard to the fact that the appeal against Brahma Das was argued by a counsel not authorised by him, this Court by its order dated February 10, 1986 per Balakrishna Reddi and OZA JJ. in cmp No.6185 of 1985 in Criminal Appeal No. 47 of 1977 recalled the judgment and order dated 2nd August, 1985 in so far as respondent Brahma Das was concerned and restored the appeal to 61e. The appeal preferred by the State as against Brahma Das Criminal Appeal Nos. 45, 46 and 47 of 1977 has now come up for hearing afresh in these circumstances.

4. Even though the judgment under appeal rendered by the High Court has been characterised as unreasonable and the four coaccused who were tried along with Brahma Das have been convicted, on the basis of the evidence which was common to all the accused persons, as per the judgment of this Court See 1985 S.C.C. Vol. 3 P. 703, delivered on 2.8.1985 per Fazal Ali and Varadarajan, JJ, we have approached this matter afresh without being influenced by these findings. We have examined the validity or otherwise of the view taken by the High Court anew, on our own, uninfluenced by the fact that the very judgment which is under challenge has been found unsustainable by another Bench of this Court in the context of the four co-accused who were tried along with accused Brahma Das. On giving our anxious consideration to the matter in the light of the submissions urged before us, we are unhesitatingly of the opinion that the view taken by the High Court in the judgment under appeal is manifestly unreasonable and cannot be sustained. The reasons which impel us to form this opinion will become apparent presently.

5. The victim, Ranjit Ram Pande, was shot dead at about 5.00 P.M. on 13th June, 1974. His cousin P.W. 14 Jokhai Das, sustained grievous injuries inflicted with a stick in the course of the same transaction. The prosecution relied on the evidence of 4 eyewitness viz. P.W. 1 Aditya Narain, P.W. 5 Ram Nihore, P.W. Yadunath Prasad and P.W. 14 Jokhai Das. The learned Sessions Judge after an extremely careful appraisal of the evidence came to the conclusion that the four witnesses were present at the scene of occurrence and their testimony was reliable. Their evidence clearly established that Brahma Das was a member of the unlawful assembly, having the common object of committing the murder of the victim (Ranjit Ram Pande), which consisted of himself and the four co-accused who were tried along with him. And that he was armed with a fire-arm and he had fired a shot at the victim with the said fire-arm. The High Court exercising appellate jurisdiction instead of scrutinizing the evidence of these four eye-witnesses individually, discarded their evidence wholesale, substantially on the ground that the prosecution version as narrated in the FIR at the instance of one of them was in some respects discrepant from the prosecution version as unfolded by these witnesses in the Court. This approach was totally unwarranted and impermissible. The report made in the hand of one Yadunath Prasad which he had written as per the dictation of P.W.I P.W. 1. Aditya Ram. was treated as FIR. At best the evidence of P.W. 1 could have been tested with reference to the version contained in the FIR and appropriate inference could have been drawn vis-a-vis P.W. 1 on the basis of the alleged discrepancy. The evidence of the other eyewitnesses who had nothing to do with the narration of the FIR could not have been collectively condemned, wholesale, on the basis of the alleged discrepancies in the context of the previous statement of PW I contained in the FIR on the one hand, and their evidence at the trial, on the other hand. In fact what according 10 the High Court was a serious discrepancy was one that hardly mattered. In the FIR lodged soon after the murderous assault there was no mention of the victim being given a stick blow

whereas it was stated in the court by other witnesses that a stick blow was given. The medical evidence disclosed that there was a fracture of the skull. If PW 1 had referred to the gun shots fired at the victim and in the tension of the moment omitted to refer to a stick blow, it was a matter of little consequence. The High Court made a mountain out of a non-existent molehill. Besides, the High Court was so much obsessed by this one factor pertaining to the discrepancy in the FIR that the High Court failed to attach due importance to the fact that the presence of PW 14 Jokhai Das at the scene of occurrence was not open to doubt in view of the fact that he was injured and had sustained a fracture in the course of the very same transaction. There was no warrant to assume that this injury was self-induced and not one sustained in the course of the occurrence resulting in the murder of Ranjit Ram Pande, or that the injury did not result in a fracture as disclosed by the medical evidence and the X-Rays. The High Court, however, made an unnecessarily suspicious approach to the evidence of PW 14, and the relevant medical evidence, and accepted the defence theory that the evidence was manipulated which theory was built sheerly on the foundation of conjectures and surmises. The evidence of X-Rays, and that of the doctors who had examined PW 14 soon after the occurrence was discarded in a most casual manner for the mere asking though there was not infirmity. The High Court did so merely because the defence made a suggestion that a minister was under hospitalization as an indoor patient at the same hospital during the relevant period, and the deceased belonged to his party. The High Court also failed to attach due importance to the circumstance that there was other evidence besides that of these eyewitnesses (who had been collectively discredited, wrongly, in an extremely casual manner) which satisfactorily established that the incident had occurred at about 5.00 P.M. when land was being measured by the revenue officials as deposed to by these witnesses. The evidence of P.W. 4 Ramesh Chand Verma clearly established that the deceased victim and the injured PW 14 were present at the scene of occurrence when they were taking measurements and that the assault was mounted on them at that point of time. Of course P.W. 4 stated before the court that he was not able to identify the assailants, and had to be confronted with his earlier statement wherein he had implicated the accused, and he was declared as hostile in this context. The High Court totally discarded his evidence on the ground that he had been declared hostile. The High Court over looked that he had been declared hostile only in the aforesaid context and that his evidence supported the prosecution version that the murderous assault took place at the aforesaid time and place as deposed by the other witnesses when he, in his official capacity, was engaged in taking the measurements. In doing so the High Court disregarded the settled position of law as reflected in numerous decisions of this Court to the effect that such part of the testimony of a hostile witness as inspires confidence can be accepted by the Court See Bhagwan Singh v. State , Sat Paul v. Delhi Administration ., Syad Akbar v. Stale of Karnataka1980 S.C.C. (Cr) 59, Upendra Mahakud v. State1985 Crl. L. 3. 1767. The fact however remains that even this witness who has in a way evinced sympathy for the accused by stating that he had not been able to identify the culprits had deposed that the incident had occurred when he was so engaged in taking the land measurements. Leaving aside the question of identity of the assailants, his evidence clearly corroborated the testimony of the prosecution witnesses as to the time, place and manner of the occurrence. P.W. 4 was a disinterested Government official who was discharging his official duty at the place of occurrence at the material time. He deposed to the fact that the victim, P.W.I, P.W. 4 and P.W. 5 were present when the miscreants came running and mounted an assault on the victim. The High Court persuaded itself to the view that the evidence had been subsequently concocted, merely on the basis of the submission to this effect made by the defence unmindful of the fact that

there was no material to support such a conclusion. The vision of the High Court was evidently blurred by the fact that the witnesses allegedly belonged to the same political party as that of the deceased. Thus the High Court has ignored the close careful scrutiny of the evidence of the eyewitnesses made by the learned Sessions Judge whose appraisal was up turned and thrown overboard without any legal justification merely by reason of the fact that the High Court was over obsessed by the conjectural submissions made by the defence which were not buttressed by material on record and were lacking in substance. The findings recorded by the High Court are thus very much less than reasonable and are vitiated by the aforesaid flaws in its basic approach. We are, therefore, of the view that the learned Sessions Judge has appraised the evidence with due care and caution and that the evidence of these witnesses does not suffer from any such infirmity as would justify discarding their testimony. The most important evidence is that of PW 14 Jokhai Das whose presence at the scene of occurrence cannot be doubted in view of the fact that he has sustained grievous injury in the course of this very transaction. The incident occurred in day light at about 5 PM and since his presence cannot be disputed and he himself has sustained injuries in the course of the very transaction it stands to reason to hold that he had witnessed the incident. There is no reason why he should exculpate the real accused and implicate Brahma Das and others. He himself is not very closely related to the deceased (he is only a cousin) and would not incur the wrath and the enmity of the accused attendant with risk to himself by falsely implicating them. We are told that there were two factions and there was history of enmity between them. Each faction had lost one of its members in the course of the murders which were committed in the past. But then this is possibly the root cause of the occurrence resulting in the murder of the victim. And the evidence of the witnesses cannot be disbelieved solely on this ground as per the law declared by this Court in numerous pronouncements Badri v. State of U.P. . To use the language of Jaganmohan Reddy J In Himachal Pradesh v. Om Parkash 1972 (2) SCR 706. :

> There is in our view no justification for the High Court in jettisoning this cogent evidence of a conclusive nature on mere conjectures and on the omnibus ground that the witnesses were not independent or impartial which as we have shown is without justification.

6. The learned Counsel for the respondent-accused has not been able to satisfy us that the evidence of the eye-witnesses is unreliable or that the assessment made by the learned Sessions Judge was incorrect. On scrutinising the evidence afresh on our own with an open mind we are of the view that the assessment made by the learned Sessions Judge is unexceptionable. The judgment of the High Court in so far as Brahma Das has been acquitted for an offence under 302/149 IPC must accordingly be set aside. So also the acquittal for the other offences viz. for the offences under Section 325/149 IPC is set aside. The conviction of Brahma Das for these offences as recorded by the Sessions. Court is restored. So for as the sentence is concerned, we do not feel that it is a case which calls for a death sentence. Accordingly in place of the death sentence imposed by the Sessions Court, we substitute the sentence of imprisonment for life. The sentence imposed by the Sessions Court in respect of the offences under Section 148 and Section 325 read with 149 IPC is restored. The substantive sentence shall run concurrently. Accused Brahma Das is on bail. He shall be taken into custody without delay for serving out the remaining part of the sentence. We order accordingly. The appeal is partly allowed to this extent.