

Ram Prakash And Ors. vs The State Of Uttar Pradesh on 7 November, 1968

Equivalent citations: (1969)1SCC48, AIR ONLINE 1968 SC 29

Bench: A.N. Grover, J.C. Shah

JUDGMENT

Grover, J.

1. The three appellants were convicted under Section 302, read with Section 34, Indian Penal Code, by the learned temporary Civil and Sessions Judge, Kanpur and were sentenced to death for the murder of Ganeshi Lal on July 19, 1966. The Allahabad High Court has rejected their appeal and has also confirmed the sentence of death. They have appealed to this court by special leave.

2. On July 13, 1966, Rikhi Lal, Rameshwar and others were committed to the Court of Sessions to stand their trial under Sections 147 and 326 of the Indian Penal Code, for causing grievous hurt to Ganeshi Lal. By way of revenge, Rameshwar's brother Ram Prakash, Rikhi Lal's collateral Ram Nath and their alleged associate Rajan are stated to have attacked Ganeshi Lal at about 8 a.m. on July 19, 1966. The occurrence is alleged to have taken place in front of the house of Rikhi Lal on the road leading from Ganeshi Lal's manure heap to his house. He was returning home after throwing some cowdung on his manure heap. Ram Prakash and Ram Nath are stated to have used knives and Rajjan a dagger (karoli). Ganesh Lal was given several blows and was stabbed even after he had fallen down. The first information report was lodged by Nathu Ram at 9.30 a.m. at Derapur police station which is at a distance of 6 miles from village Jarauli where the occurrence took place. Ganeshi Lal sustained as many as 11 incised wounds which were on the neck, chest, the right lumber region and the left wrist and hand. One of these injuries pierced right through the neck from left to right while other injuries cut the larynx, the trachea, the aorta, the pericardium, the diaphragm and the liver. Four eye witnesses namely, Nathu Ram P.W. 1 grand nephew of the deceased, Vishambhar P.W. 2, Devi Lal P.W. 3 and Ram Bharosey P.W. 9 deposed to having seen the occurrence. The High Court rejected the argument based on grounds of improbabilities in respect of the evidence given by the aforesaid eye witnesses. As regards the partisan and inimical nature of their evidence, the view of the High Court was that at least two, if not three of the eye witnesses were independent and impartial and there was no reason why their testimony should not be believed. The High Court also said that the third appellant Rajjan appeared to have joined the other two because he was their friend and associate and he has not been able to suggest any particular reason why he should have been falsely implicated in the case. Owing to the brutal attack made on an unarmed person and the continued act of stabbing even after he had fallen down, it was held that the imposition of sentence of death was justified.

3. Mr. Frank Anthony, who has argued the appeal, has raised the following seven points before us :

(1) The judgment of the High Court particularly when a reference has been made for confirmation of the sentence of death is no judgment in the eye of law. No attempt has been made to assess all the evidence or the facts.

(2) The High Court did not discuss the medical evidence which cast a doubt on the prosecution case.

(3) Natural witnesses who were either present or were likely to have witnessed the occurrence were not examined.

(4) The learned Sessions Judge has used the fact of the accused having gone into hiding for the purpose of corroboration of other evidence. The High Court, however, did not consider the infirmities in this behalf.

(5) Rajjan appellant was assumed to be an associate and friend of the other two appellants without there being any basis for this assumption.

(6) the numerous illegalities and irregularities were committed with regard to the first information report. It was never recorded at 9.30 a.m. and was recorded much later at the spot. Thus the prosecution case suffered from this taint.

(7) The evidence of the eye witnesses could not have been accepted when the plan which had been prepared was kept in view.

4. It will be best to deal with the first point last.

5. On the second point, it is urged, that according to the medical evidence the death might have been caused on the night intervening 18th and 19th July, 1966, Dr. S. P. Gulati P.W. 4, who had performed the post mortem examination stated that faecal matter and gas were present in the small and large intestines of Ganeshi Lal; owing to this reason he thought it probable that the deceased had not eased himself till the time of receiving the injuries. Mr. Anthony says that it is well-known that a person with normal habits particularly in villages empties his bowels early in the morning. The presence of the faecal matter in the small and large intestines showed that Ganeshi Lal must have died within some hours of his taking food on the previous night namely by the midnight of 18th and 19th July, 1966. This, according to Mr. Anthony, established that the prosecution case about the time of death cannot be accepted. Reliance has been placed on the statement in Modi's Medical Jurisprudence and Toxicology, 10th Ed., p. 151, that one can give an opinion that the death occurred some time after the deceased got up in the morning if the large intestines was found empty of faecal matter. It is submitted that conversely it can well be said that if the large intestine is found full of faecal matter it should be inferred that death did not take place in the morning. The learned trial judge discussed this matter in his judgment and disposed of it by saying that there was no proof that before the occurrence Ganeshi Lal had eased himself and that even if he had gone for that purpose

there was no presumption that his bowels had moved. According to him, the question of time had to be decided on the basis of direct and other evidence on the record. We concur in that view and find it difficult to accept that the question of time should be decided only by taking into consideration the fact that faecal matter was found in the intestines of the deceased. This may be a factor which might have to be considered along with the other evidence but this fact alone cannot be decisive.

6. On the third point Mr. Anthony has referred to the site plan (item No. 38) which shows that the house of Manni Lal Carpenter was almost opposite to the place of the occurrence. Ram Bharosey P.W. 9 one of the eye witnesses stated that he had gone on the fateful morning to the house of Manni Lal and as soon as he reached the door and had called him he saw Ganeshi Lal going along the lane from the western side to the eastern side. At that moment the appellants attacked him and inflicted injuries on him. Mr. Anthony says that Manni Lal was the most natural witness firstly, because his house was so close to the place of occurrence and secondly, because he must have come out to let Ram Bharosey in when Ram Bharosey went to his house. The non-production of such a natural witness by the prosecution casts a good deal of doubt on the truthfulness of its case. Mr. Anthony has also referred to the occupants of the other houses shown in the plan in the vicinity of the place of occurrence and has submitted that the non-production of those witnesses discloses a serious weakness in the prosecution case. So far as Manni Lal is concerned Ram Bharosey stated that at the time of occurrence he was inside the house and that he did not even respond from inside to his call. This explains why Manni Lal did not witness the occurrence and was not made a witness. Mr. Anthony, however, has not been able to satisfy us that the person residing in the immediate vicinity of the place of occurrence, had actually seen the occurrence and were deliberately withheld. While developing this point Mr. Anthony has submitted that some of the witnesses who are shown in the plan to have been present when the occurrence took place were not produced by the prosecution. These are Ashrafi Lal Jangi Lal and Mijaji Lal. No such argument appears to have been addressed to the High Court and, in any case, as has been observed by this court in *Masalti v. State of U. P.* (1964 (8) Schedule 133), it would be unsound to lay down as a general rule that every witness cited by the prosecution must be examined by it even though his evidence was not very material or he was known to have been won over or terrorised. In the present case no effort appears to have been made when the Investigating Officer gave the evidence to elicit from him the reason for not producing the aforesaid three persons.

7. The fourth submission of Mr. Anthony is that the trial judge relied on the fact that the appellant had gone into hiding after the occurrence and this lent corroboration to the prosecution story. The High Court did not consider this aspect at all. It appears that the question of appellants having absconded was not discussed by either side before the High Court and that is apparently the reason why it finds no mention in its judgment.

8. As regards the fifth submission of Mr. Anthony, it is true that there is hardly any evidence to the effect that Rajjan appellants who is a muslim, the other two appellants being Hindus, was on particularly friendly terms with them or could be called their close associate. The High Court has certainly overlooked the absence of any cogent evidence on that point and has assumed that Rajjan joined the other appellants because he was their friend and associate. But the absence of any evidence that Rajjan was on such intimate terms that he would join the other two appellants in a

murderous attack on Ganeshi Lal can be of no avail to him if the direct testimony which has been believed by the High Court is accepted as truthful.

9. The submission of Mr. Anthony relates to the time when the first information was recorded. It has been vehemently urged that it was not recorded at 9.30 a.m. but the Station House Officer went to the spot and recorded it much later there. It appears that Nathu Ram P.W. 1 according to whom Ganeshi Lal happened to be his grandfather by his family relationship got a report written by Radhey Shyam about the occurrence which is Ext. Ka-1. He put his signature on it and took it to the police station Derapur and handed it over there. Nathu Ram P.W. 1 stated that the report was dictated by him to Radhey Shyam near the dead body of Ganeshi Lal and the eye witnesses and several other persons of the village had arrived at that time and were present. He did not send the report through the police chowkidar who had reached the spot. He went to the police station on the back of a mare and met the Station House Officer there. The clerk-constable to whom he handed over the report at the police station did not do any writing in his presence. The Sub-Inspector also recorded his statement in the village at about 1 O'clock in the day. The evidence of the Sub-Inspector Chhotey Lal Shastri P.W. 10, was that the Chick report (F.I.R.) was prepared in his presence. It was prepared, according to him, in the presence of Nathu Ram. He stated that he did not record the statement of the informant at the police station for the reason that he was in a hurry to reach the spot nor did he copy in the case diary the report or make any entry about the registration of the case in the General Diary at the police station. On the other hand he did this at the spot (meaning the place of occurrence). He, however, denied the suggestion that the report Ka-1 was prepared subsequently in consultation with him. Mr. Anthony has emphasised the discrepancies between the statement of the Sub-Inspector and Nathu Ram P.W. 1 and has further pointed out that neither Radhey Shyam who had scribed the written report was produced nor did the clerk-constable or the Head-Moharir from the police station come to give evidence. It is said that the manner in which the first information report was recorded was highly irregular and illegal and did not conform to the provisions contained in Regulation 108 of the U.P. Police Regulations. This Regulation provides that the first step of the investigating officer should be to note in the case diary prescribed by Section 172 of the Cr. P. Code the time and place at which he had information on which he acts and to make in the diary a copy of the first information report. When beginning his investigation he must note in the diary the time and place at which he begins etc. It may be that the Sub-Inspector who was investigating the case committed some irregularity, e. g., he did not copy in the case diary the report as he ought to have done but his matter again should have been agitated before the High Court which does not seem to have been done. We do not consider that for this reason alone the evidence of the eye witnesses should be rejected particularly of those who have been believed both by the trial court and the High Court.

10. Mr. Anthony's attempt to demonstrate that the evidence produced in court when compared with the plan was false cannot succeed. Firstly because no such submission was made to the High Court and secondly because the two witnesses Devi Dayal P.W. 3 and Ram Bharosey P.W. 9, have given clear and consistent evidence and no enmity or hostility was shown to exist between them and the appellants. In the light of the first submission of Mr. Anthony that the High Court did not properly assess or reassess evidence, as should have been done, in a reference made under Section 374 of the Criminal Procedure Code, we have, by way of abundant caution, considered the various facts and

circumstances as also the evidence of the material eye witnesses together with the criticism offered by Mr. Anthony. We see no reason to disagree with the view of the High Court that the prosecution case stands proved by the direct testimony of the aforesaid two eye witnesses.

11. The appeal accordingly fails and is dismissed.