

## **Bankey Lal And Ors. vs State Of U.P. on 4 February, 1971**

**Equivalent citations: AIR1971SC2233, 1971CRILJ1540, (1971)3SCC184, 1971(III)UJ330(SC), AIR 1971 SUPREME COURT 2233, 1971 UJ (SC) 330 1971 SCD 400, 1971 SCD 400**

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**Bench: A.N. Grover, K.S. Hegde**

### **JUDGMENT**

K.S. Hegde, J.

1. 23 persons including the 9 appellants were tried before the Additional Sessions Judge, Badaun for various offences. All of them were convicted by the learned Sessions Judge Under Section 302/149, I.P.C., 307/149 I.P.C, as well as Under Sections 148 and 147 I.P.G. Under those heads they were sentenced to various terms of imprisonment, the maximum being the imprisonment for life Under Section 302/149 I.P.C. The various sentences were ordered to run concurrently. In appeal the High Court of Allahabad acquitted 14 of the 23 accused giving them the benefit of doubt. The convictions imposed on the others and the sentences awarded to them were confirmed Thereafter this appeal has been brought after obtaining special leave from this Court.

2. It has been found by both the Courts below and that finding had not been challenged before us that there was enmity between the first appellant Bankey Lal, his relations and friends on one side and the deceased Bhullan, Rameshwar and injured P.W. 5, Ram Chandra and the members of their families on the other. There appears to have been a long standing dispute between these two groups. Sometime before the occurrence, the first appellant appears to have purchased a grove which he wanted to convert into an agricultural land. That grove was adjoining the lands of Ram Chandra. At the time of conversion of the grove into an agricultural land, the first appellant claimed that a portion of the land belonging to him had been encroached upon by Ram Chandra. Ram Chandra denied that allegation. On the day prior to the occurrence viz. on June 29, 1964 which Ram Chandra was ploughing his lands, the first appellant accompanied by some others came and obstructed him from ploughing the land. Then the parties agreed that the dispute between them may be decided by the Lekhpal. The first appellant was to get the Lekhpal the next day. Till about 9 a.m. on the next day, the Lekhpal did not turn up. Thereafter according to the prosecution Ram Ghandra and his men began to plough the land & at that time the appellants and others came armed to that place, attacked and killed Bhullan and Rameshwar and seriously injured P.W. 5 The defence version is that when the first appellant and his men were digging the roots of the trees in the grove purchased by the first appellant, the two deceased persons, Ram Chandra and their party men came and attacked them at that time in self defence the first appellant and two others attacked the party of Ram

Chandra, as a result of which Bhullan and Rameshwar died and Ram Chandra sustained injuries.

3. It is established that at the time of the incident both the parties had sustained injuries. So far as Ram Chandra is concerned he had received as many as eighteen injuries, out of which four were incised wounds, six were punctured wounds, four were contused wounds and the rest were contusions and abrasions Deceased Rameshwar had received twenty three injuries out of which one was an incised wound, another a punctured wound and the rest were contusions or abrasions. The deceased Bhullan had received nine injuries out of which eight were contusions and one was a stab injury. On the side of the appellants the first appellant Bankey Lal had received some gun shot injuries. Some pellets appear to have grazed his body. None of them was a serious injury. He had sustained two minor abrasions also. Some of his party men had received some minor injuries.

4. According to the prosecution the party of Ram Chandra were first attacked in the field ploughed by him. At that place Ram Chandra dropped down having been injured. Thereafter Rameshwar, Bhullan and some children from the house of Ram Chandra tried to run away but the party of the appellant pursued them they intercepted Rameshwar at about 60 paces from the original place of attack and severely attacked him he dropped down at that place but Bhullan escaped his attackers at that place and ran towards the river which is about six furlongs from the first place of attack but the appellants party pursued him and got at him near the bank of the river. There they attacked him severely and he was killed at that place. The further case of the prosecution is that after killing Bhullan the appellants and others came back to the place where Rameshwar was lying injured and again attacked him. Thereafter they came to the place where Ram Chandra was lying injured and attacked him again.

5. The prosecution case that the party of Ram Chandra had been attacked at three different places receives satisfactory corroboration from the fact that the Investigating Officer found large amount of blood at three different places. There was blood in the field of Ram Chandra; there was considerable blood at a place about 60 paces from that place and again there was large amount of blood near about the river where Bhullan is said to have been attacked. The Investigating Officer had sent the blood stained earth to the Chemical Examiner and Serologist who found that the blood in question is human blood.

6. The prosecution has examined six witnesses to speak to the occurrence. They are (1) P.W. 5, Ram Chandra; (2) P.W. 2 Ramesh Chandra; (3) P.W. 3, Ram Deo; (4) P.W. 6, Sharda; (5) P.W. 8 Munshi; (6) P.W. 9, Jwala Prasad and C.W. 1 Janki.

7. So far as P.Ws. 5, 6 and C.W. 1 are concerned they are interested witnesses. They are the close relations of the injured persons. The presence of Ram Chandra and Jwala Prasad at the time of the occurrence is not disputed. There can be no doubt that P.Ws. 6 and C.W. 1 also could have witnessed the occurrence. P.Ws. 2 and 3 claim to have passed by that side at the time of the occurrence. Both the Courts i.e. the trial Court as well as the High Court have come to the conclusion that these witnesses have witnessed the occurrence but none of these witnesses has explained how Bankey Lal came to be injured. The trial Court as well as the High Court were unable to come to a positive conclusion as to how the incident started and who were the aggressors. But both those Courts have

accepted the prosecution case as regards the attack on Rameshwar at about 60 paces from the field of Ram Chandra and on Bhullan near the river.

8. So far as the attack on Bhullan near the river is concerned there is satisfactory evidence. P.W. 8 speaks to the same. He is an independent witness. He is not shown to have been friendly with Ram Chandra's party or inimically disposed towards the appellants. He claims to have been cutting grass near the river when the incident took place. He has identified all the assailants of Bhullan. The two criticisms directed against his evidence are (a) that he is not likely to have gone near the river for cutting grass as he and the members of his family owned large tracts of land near about his house and (2) that in his evidence he had implicated all the 23 accused as those who attacked Bhullan but the High Court has not accepted his evidence as regards 14 of those accused. There is no substance in either of these two criticisms. According to him he went to the river side for cutting grass because at the place good grass is available. This is a satisfactory explanation. As regards the other criticism, the High Court has given the benefit of doubt and acquitted 14 accused solely on the ground that in the dying declaration given by Ram Chandra he had not mentioned their names. We must bear in mind that when Ram Chandra gave his dying declaration he was hovering between life and death.

9. So far as the attack on Rameshwar is concerned the prosecution evidence receives corroboration from the blood found at that place. Both the trial Court and the High Court have accepted the evidence relating to that attack. We see no reason to disagree with the finding reached by those Courts.

10. It was urged by Mr. Garg, learned Counsel for the appellants that as the prosecution has not explained the injuries found on the person of Bankey Lal, we must discard the entire prosecution evidence and in this connection he invited our attention to the decisions of this Court in Mohar Rai v. State of Bihar and in Ugar Ahir and Ors. v. State of Bihar . In the first case on the fact of that case the Court came to the conclusion that the failure on the part of the prosecution witnesses to explain injuries on the person of the accused persons went to show that the prosecution witnesses were not truthful witnesses and further on the material on record this Court held that the possibility of self defence cannot be ruled out. In the second case all that this Court ruled was that the maxim falsus in uno, falsus in omnibus is neither a sound rule of law nor a rule of practice. We fail to see how these decisions are of any assistance to the appellants. It is true that if prosecution witnesses are proved to have not deposed truly in all respects their evidence is required to be scrutinised with care. Both the trial Court and the High Court have not accepted the prosecution evidence as regards the attack in Ram Chandra's field on the ground that those witnesses did not explain the injuries found on the person of Bankey Lal. But so far as their evidence regarding the attack on Rameshwar is concerned, the same is corroborated by the blood found at that place. Further there is no valid criticism so far as the evidence of P.W. 8 is concerned when he speaks to the attack on Bhullan. No question of self defence can arise so far as those two incidents are concerned.

11. It was urged, that the prosecution case that there were attacks at three different places is neither supported by the first information report nor by the dying declaration given by Ram Chandra. Hence we should not accept that version. So far as F.I.R. is concerned, it was given by Head constable Anwar Hussain. This Head constable appears to have gone on some duty to a village near

by the village where the incident took place. At that place he got information that there was a riot going on near the scene of occurrence. Hence he went to that place. By the time he reached that place, the dead body of Bhullan as well as the injured persons Rameshwar and Ram Chandra had been taken to the house of Ram Chandra. There he went straight to the house of Ram Chandra. There he learnt about the incident from the persons who had gathered there including some of the relations of Ram Chandra. Thereafter he sent a brief report about the incident. The material portion of the report reads thus :

The two parties fought each other badly. As a result of the injuries received Bhullan died and the condition of Ram Chandra and his son Rameshwar was serious. The others had managed to run away with their lives. The occurrence had been witnessed by the village people and also outsiders.

12. We attach no significance to the fact that this report did not mention that there were attacks at three different places. It must be remembered that the report was not given by any injured person or by any of those who witnessed the occurrence. The Head constable collected the information from those who were there and sent a brief intimation to the police station. A reading of the report shows that the information contained therein was the gist of the information gathered by the head constable from those who were there in the house of Ram Chandra. Now coming to the dying declaration of Ram Chandra, here again it is cryptic one. There is no surprise about it because at the time the dying declaration was given Ram Chandra's condition was precarious. It is unlikely that at that time he would have been in a condition to give a detailed version.

13. It was next contended that the first to inform about this incident was Bankey Lal and no-one on the side of Ram Chandra took the trouble of informing the police about the incident and from that circumstance we are asked to draw an inference that the prosecution story is unreliable. We are unable to appreciate this contention. So far as Bankey Lal's party is concerned they had sustained some trivial injuries. The incident had taken place at about 1 O'clock in the afternoon. Bankey Lal gave the information to the police at about 5-10 P.M. and in that information he did not say a word about the injuries sustained by Bhullan, Rameshwar and Ram Chandra. He merely stated that he and a few of his friends had been attacked by the party of Ramchandra. So far as Ram Chandra's side is concerned, Bhullan had died at the spot itself. Rameshwar and Ram Chandra were in precarious condition. Therefore their relations were more concerned with attending on them rather on going to the police station. Further within a few hours of the incident, the Head constable Anwar Hussain had come there and he had gathered the information. Therefore there was no need for them to send the information to the police.

14. We are unable to agree with the learned Counsel for the appellants that the trial Court and the High Court have not properly appreciated the evidence on record. This Court does not review the evidence in a criminal case unless it is shown that the High Court had failed to take into consideration any material piece of evidence or had approached the case from a wholly wrong point of view. None of the criticisms leveled against the High Court's judgment is valid.

15. In the result this appeal fails and the same is dismissed.