Ram Bali vs State Of Uttar Pradesh on 16 April, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2329, 2004 (10) SCC 598, 2004 AIR SCW 2748, 2004 ALL. L. J. 1766, 2004 CRI(AP)PR(SC) 275, 2004 (4) ACE 619, 2004 (3) SLT 202, 2004 (6) SRJ 369, (2004) 3 JCR 53 (SC), (2004) 18 ALLINDCAS 79 (SC), (2004) 49 ALLCRIC 453, (2004) 3 ALLCRILR 1, (2004) 28 OCR 383, (2004) 2 UC 1034, (2005) 2 ALLCRIR 1691, (2004) 2 CURCRIR 225, (2004) 4 SCALE 611, (2004) 3 SUPREME 547, (2004) 2 CRIMES 493, 2004 SCC (CRI) 2045, 2004 (2) ANDHLT(CRI) 92 SC

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  204 of 2003

PETITIONER:
Ram Bali

RESPONDENT:
State of Uttar Pradesh

DATE OF JUDGMENT: 16/04/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT,J A Division Bench of the Allahabad High Court by the impugned judgment upheld the conviction recorded by learned Special Judge, Hamirpur holding appellant guilty of offence punishable under Section 302 of the Indian Penal Code 1860 (in short 'IPC). Accused-appellant was sentenced to undergo imprisonment for life. However, co-accused Rajendra Singh was acquitted.

Background facts which led to trial are as follows:

> Complainant-Ram Singh (PW-1) at the time of occurrence was living at village Swasa. On 20.7.82 at about 6.00 p.m. when he was returning to his village Pyare Singh (PW-2), a co-villager was also with him. On the way his brother Prem Singh (hereinafter referred to as the 'deceased') who was living at village Chhani met him. They came to the bus stop and sat at the Chabutra in front of the Dak Bungalow and waited for the bus. At that time a bus came from Hamirpur. Appellant-Rambali Singh

(A-1) and Rajendra Singh (A-2) residents of village Chhani Bujurg got down from that bus.

Accused Rambali had a double barrel gun in his hand and a single barrel gun was in the hands of the acquitted accused Rajendra Singh. After that they went to a nearby betel shop. From there they came and stood in front of them and said to his brother, the deceased "Dishonest: should we kill you". At that time Rambali fired from his double barrel gun and killed the deceased who died at the spot. The complainant and others raised alarm and the accused ran away towards the village hospital. There was enmity between the family members of the complainant and accused Rambali Singh due to litigations and for that reason the accused persons had assassinated the deceased-Prem Singh. Many villagers were present there at the time of occurrence. The occurrence report was drafted by Ram Kishan Gupta under the instruction of complainant, registered as FIR and is Exhibit Ka-1. After FIR was lodged, investigation was undertaken.

On completion of investigation charge-sheet was placed and matter was taken up for trial after framing charges. Six witnesses were examined to further the prosecution case. Out of six witnesses examined, PWs 1 and 2 were stated to be the eye-witnesses to the occurrence. The accused who pleaded innocence did not examine any witness. They took the plea that the complainant was not present at the site of the occurrence as alleged to have happened. One Ram Kishan Gupta had called him from his village Swasa on motorcycle. The Trial Court accepted the version of PWs 1 and 2 as a correct reflection of what had happened and placing reliance on their evidence directed conviction.

But, as noted above, co-accused Rajendra was acquitted by the High Court.

In support of the appeal, learned counsel for the accused-appellant submitted that the High Court has not elaborately analysed the evidence and has cryptically disposed of the appeal. Medical evidence was clearly at variance with the ocular evidence and, therefore, both the Trial Court and the High Court had fallen into grave error by placing reliance on the evidence of PWs 1 and

2. Though the accused allegedly used a gun, it was not sent for forensic testing. Evidence on record establishes that the village was a dacoit infested, for which police patrolling just before the alleged incident took place. A Constable (PW-5) had gone to the village, but nobody reported anything to him. PW-2 had stated that the deceased had taken lunch at about 2.00 p.m. When the doctor conducted post-mortem he found that the stomach was empty. With reference to the textbook "Medical Jurisprudence and Toxicology" by HWV Cox, it was pointed out that at least six hours are needed for the food to get completely digested. Medical evidence, therefore, probabilises the defence version that some incident took place around 9.00 p.m. Though the distance of the alleged place of occurrence from the police station is about 8 Kms., FIR was lodged at the Binwar police station around 9.30 p.m. It has been accepted that it would have hardly taken half an hour by bus or motorcycle to reach the police station. The doctor's view noted in the post-mortem regarding rigor

mortis also improbabilises the time of occurrence as alleged. Therefore, PWs 1 and 2 cannot be truthful witnesses. This is a case where the High Court's judgment is not maintainable because there was no proper appraisal of the evidence in the background of submissions made by the accused-appellant. As there is perversity in appreciation and want of care and caution required for examining truthfulness of related witnesses' version, both the Trial Court's and the High Court's judgment become vulnerable. Though the presence of several others has been accepted, no reason has been given for their non-examination. Finally, it is submitted that the judgment was delivered long after the hearing was closed and, therefore, the arguments made before the High Court have not been properly considered. Reference was made to a decision in Anil Rai v. State of Bihar (2001 (7) SCC

318) to contend that the judgment should be set aside and the matter remitted to the High Court for fresh consideration. The appellant had taken specific plea that on the concerned date he had gone to jail for the purpose of identification and was not present. Three witnesses were examined to substantiate the plea that the accused-appellant was not present at the time of incident. It was submitted that the plea of alibi set up by the accused-appellant has been erroneously brushed aside without any reasonable basis.

In response, learned counsel for the State supported the judgments of the Courts below and urged that the evidence have been critically examined in the proper perspective and there is no infirmity to warrant any interference to the concurrent findings recorded by the Courts below so far as the guilt of the accused is concerned.

Learned counsel for the respondent submitted that the discrepancy between the ocular version and the medical evidence was not even pleaded before the High Court. The plea relating to belated delivery of judgment cannot according to the respondent be pressed into service.

At the outset, it is to be noted that before the High Court only two points were said to have been urged. They are as follows:

> (1) No witness has witnessed the incident and the accused have been falsely implicated because of enmity.
>
> (2) The accused Ram Bali Singh went to jail on 20.7.1982 for identification and he was not present at the time of incident.

We notice that the High Court specifically records that only two points were urged before it. It has to be noted that the statement of as to what transpired at the hearing, the record in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in Court have been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges who have made record to make necessary rectification. That is only way to have the record corrected. It is not open to the appellant to contend before this Court to the contrary. (See State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. (1982 (2) SCC 463), Bhavnagar University v.

Palitana Sugar Mill (P) Ltd. and Ors. (2003 (2) SCC 111), and Roop Kumar v. Mohan Thedani (2003 (6) SCC 595).

Even otherwise, the plea that the medical evidence is contrary to the ocular evidence has also no substance. It is merely based on the purported opinion expressed by an author. Hypothetical answers given to hypothetical questions, and mere hypothetical and abstract opinions by textbook writers, on assumed facts, cannot dilute evidentiary value of ocular evidence if it is credible and cogent. The time taken normally for digesting of food would also depend upon the quality and quantity of food as well, besides others. It was required to be factually proved as to the quantum of food that was taken, atmospheric conditions and such other relevant factors to throw doubt about the correctness of time of occurrence as stated by the witnesses. Only when the ocular evidence is wholly inconsistent with the medical evidence the Court has to consider the effect thereof. This Court in Pattipati Venkaiah v. State of Andhra Pradesh (AIR 1985 SC 1715) observed that medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second. The state of the contents of the stomach found at the time of medical examination is not a safe guide for determining the time of occurrence because that would be a matter of speculation, in the absence of reliable evidence on the question as to when exactly the deceased had his last meal and what that meal consisted of. In Nihal Singh and Ors. v. The State of Punjab (AIR 1965 SC 26), it was indicated that the time required for digestion may depend upon the nature of the food. The time also varies according to the digestive capacity. The process of digestion is not uniform and varies from individual to individual and the health of a person at a particular time and so many other varying factors.

Factors were also noted by HWV Cox in his book referred to by learned counsel for the appellant. (See Seventh Edition, at pages 300 to 302). An author's view which is opinion based on certain basic assumptions only cannot be a substitute for evidence let in to prove a fact - which invariably depends upon varied facts, and according to the peculiar nature of a particular case on hand. The only inevitable conclusion is that the plea is without any substance, apart from the fact that the said plea pertaining to mere appreciation of facts was not raised before the High Court.

The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. (1995 (5) SCC 518).

In Paras Yadav and Ors. v. State of Bihar (1999 (2) SCC 126) it was held that if the lapse or omission is committed by the investigating agency or because of negligence there had been defective investigation the prosecution evidence is required to be examined de hors such omissions carefully to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding out the truth. The contaminated conduct of officials alone should not stand on the way of evaluating the evidence by the courts in finding out the truth, if the materials on record are otherwise credible and truthful; otherwise the designed mischief at the instance of biased or

interested investigator would be perpetuated and justice would be denied to the complainant party, and in the process to the community at large.

As was observed in Ram Bihari Yadav v. State of Bihar and Ors. (1998 (4) SCC 517) if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again re- iterated in Amar Singh v. Balwinder Singh and Ors. (2003 (2) SCC 518). As noted in Amar Singh's case (supra) it would have been certainly better if the firearms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would merely be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect credibility of the prosecution version.

It has been explained by the prosecution as to why there was some delay in lodging the FIR. It has been categorically stated that there was no bus available and, therefore, it could be only done when the bus was available. The question was not raised before the High Court and apart from that, explanation offered appears to be plausible, in the absence of any material to the contrary.

Another plea which was emphasised related to non- examination of alleged eye-witnesses. This plea was also not pressed before the High Court. In any event, the investigating officer and the witnesses have been examined to explain the reason as to why the others were not examined and nothing has been brought on record to discredit those claims. The Trial Court has also analysed this aspect and found no substance in the plea of the accused.

The plea relating to alleged absence was examined by the Trial Court and the High Court. It was noticed that no material was produced to show that at the point of time, when the occurrence took place, accused- appellant was present in the jail for the purpose of identification. We find no infirmity in the conclusions of the Courts below in rejecting the plea of alibi.

We also find that the plea of delayed delivery of judgment and the same rendering it vulnerable is without any substance. In Anil Rai's case (supra) this Court has only stressed upon the desirability of early delivery of judgments. In fact, the judgment impugned before this Court in the said case was not set-aside on the ground of delayed delivery of judgment and was dealt on merits. In paras 10 and 45 of the judgment this Court had indicated options to a party in case judgment is not delivered for considerably long time. We are unable to appreciate that any detriment as such was caused to the appellant on that account alone, on the peculiar facts of the case, as well.

There is no scope for reappraisal of evidence and interference with the concurrent findings of fact. This Court is not ordinarily to go into the credibility of the findings and interference is permissible only when exceptional and special circumstances exist which resulted in injustice to the accused. This is not a case of that nature and the evidence seems to be not only creditworthy but the conclusions arrived at also are well merited and sufficiently supported by overwhelming material on record. We, therefore, find no merit in this appeal, which is dismissed.