

Allahabad High Court

Ram Dulare S/O Lalji And Jhigai (In ... vs State on 23 August, 2007

Author: K Rakhra

Bench: K Rakhra, V Prasad

JUDGMENT K.S. Rakhra, J.

1. Appellants Ram Dulare and Jhingai have filed this appeal against the judgment and order dated 8.4.1982 passed by Sessions Judge Mirzapur in Sessions Trial No. 167 of 1981 (State v. Ram Dulare and Anr.) convicting the appellant Ram Dulare under Section 302, 323/149 & 148 IPC and Jhingai under Section 302/149/ 323/149 & 148 IPC and sentencing each of them to imprisonment for life on the 1st Count, one year rigorous imprisonment under each of the IInd & IIIrd count respectively.

2. On 17.4.1981 at 1.45 a.m. one Bechan resident of village Narga within the circle of police station Pannuganj, District Mirznpur lodged a report of dacoity at his house in the night of 16/17.4.1981 which is Ex. Ka.11. The narration of facts in the report were that in the preceeding night at about 10.00 p.m, he was sleeping at his Khalihan just towards south of his house. His wife, daughter in law and other members of the family including his son Prem Nath P.W. 7 were sleeping inside the house. At about mid night the appellants Ram Dulare and Jhingai resident of Dhewal along with five or six unknown dacoits came to him in khalihan . Ram Dulare and Jhingai armed with guns and their companions with lathis belaboured him. They commanded him to get the door of his house opened and to ask Prem Narain to come out. The informant under pressure gave a call on which his wife Smt. Kalawati opened the door of the house. As soon as the door was opened , appellant Ram Dulare fired a shut towards the door causing fire arm injury to Kalawati. Culprits thereafter took to their heels but in the meantime informant's son Prem Narain and witnesses Hari Das, Bachau P.W. 8 and Ram Chandra P.W. 9 etc. had gathered on the spot .The dacoits were recognized in the moon light. One silver ear top of Kalawati was found missing. On the basis of these facts, first information report was registered as Crime No. 37 under Section 395 and 397 IPC. It was further alleged by informant Bechan that this dacoity was committed on account of old enmity with aforesaid persons. Kalawati later on died on 17.4.1981 at 11:50 a.m.

3. The enmity which the prosecution later on tried to establish, was that about a month prior to this dacoity appellant Jhingai's son Babu Lal had a quarrel with the son of witness Haridas on the question of grazing of catties. Following this, Jhingai had gone to village Narga to quarrel with Hari Das and his son. At that time informant's son Prem Nath had rebuked him for this. The prosecution further alleged that 2-3 days after this incident, the appellant Ram Dulare had come to village Naraga and called Prem Narain at the door of Dhandhari and had admonished and threatened him for his behaviour with Jhingai on the said issue.

4. Undisputedly the appellant Ram Dulare is a resident of village Nawagaon which is about two miles from village Narga and he is related to Dhandhari of village Narga. Similarly appellant Jhingai is resident of Dhewal which is at a distance of about one miles from Narga. The informant claimed that he knew to Ram Dulare and Jhingai since last 10 or 12 years. Jhingai's son Babu Lal used to graze cattle of Ram Pyare of village Narga. The enmity which prosecution has tried to establish through evidence was not detailed in the first information report Ex. Ka. 11.

5. The prosecution case as developed in the evidence was that after the incident the informant with the help of his son Prem Nath and witnesses laid Smt. Kalawati on a cot and they all proceeded with her to the police station. On their way a written report was scribed at village Bakwar by one Pratap Narain and on the basis of this report (Ex. Ka 10) aforesaid crime was registered and the informant and his wife were referred to Government Hospital Mirzapur. At the hospital Kalawati died on the same day at 11:50 a.m. and injuries of Bechan P.W. 6 were examined. The distance between village Naraga and village Bakwar where the written report was scribed is about one mile.

6. Head constable Ali Hyder P.W. 10 at Police Station Pannuganj registered this crime on the basis of the written report and had referred the two injured persons for medical examination at the Government Hospital. Although the first information report was registered under Section 395/397 IPC and its investigation was commenced by S.I. Bhola Prasad Yadav P.W. 12 but the police was not confident about this dacoity. The investigating officer after recording the statement of Bechan P.W. 6 at the police station itself immediately left for village Narga and reached there in the night at 3.00 a.m. He prepared a site plan Ex. Ka. 21 and collected blood stained and plain earth vide memo Ex. Ka. 22; recorded the statement of witnesses including Hari Das and Ram Chandra named in the first information report. He made a search for the accused persons but could not trace them out. After conducting investigation upto 19.4.1981 the investigating officer realised that it was in fact not a case of dacoity under Section 395/397 IPC but it was a case under Section 307 IPC. Accordingly on 14.8.1981 when the investigating officer returned back to the police station, he altered the case under Section 147/148/307 IPC making relevant entries in the General Diary of the police station.

7. From 22.4.1981, the investigation of this crime was taken over by Station Officer Incharge Prabhu Nath Ojha P.W. 11 who visited the place of occurrence on 27.4.1981 along with previous investigating officer and recorded the statement of Prem Nath F W. 7. On 12.6.1981, after completion of the investigation he submitted charge sheet Ex. Ka. 20 in the court, on the basis of which magistrate took cognisance and committed the case to the court of sessions.

8. Kalawati was medically examined in Government Hospital Mirzapur on 17.4.1981 at 11.00 a.m. and following injuries were found on her body:

i) Firearm wound of entry on the right side of chin 6 cm x 7 cm x mouth cavity deep, margin inverted and lacerated. There was no blackening and tattooing. Underlying mandible was fractured into pieces. Clotted blood was present. X-ray of face, neck and scapula was advised.

ii) Fire arm wound of entry 2 cm x 1 cm x mouth cavity deep on left side of chin with margins lacerated and inverted and no blacking and tattooing was present.

iii) Lacerated wound 3 cm x 1 cm x muscle deep, on the middle of the chin 4 cm below injury No. 1.

9. The face of the victim was smeared with clotted blood . Two pellets were felt on the inner & back part of the right neck on the back side and back of upper part of right scapula.

10. Doctor A.D. Singh P.W. 3 had opined that injury Nos. 1 & 2 were grievous while injury No. 3 was simple. The injuries were caused by fire arm and were about 1/2 day old.

11. Smt. Kalawati died in the hospital and her dead body was sent to mortuary for autopsy on 18.4.1981 at 4.00 p.m. Dr. Ramji Pandey P.W. 4 who had given his report Ex. Ka. 8 noted the ante-mortem injuries as were found by Dr. A.D. Singh P.W. 3 in his injury report Ex. Ka.7. Dr. Ramji Pandey opined that Smt. Kalawati had died on account of shock and haemorrhage on account of ante-mortem injuries and the death had occurred about a day before the autopsy was conducted.

12. The appellants had pleaded not guilty to the charges and claimed that they have been falsely implicated .

13. The prosecution had examined twelve witnesses in the trial. Out of them Bechan P.W. 6, his son Prem Nathi P.W. 7, Bachau P.W. 8 and Ram Chandra P.W. 9 have been examined as eye witnesses. They have tried to fully support the prosecution version and have named Ram Dulare and Jhigai amongst 7 or 8 malefactors and they have stated that Ram Dulare had opened fire on the deceased.

14. Dr. A.D. Singh P.W. 3 had examined injuries of Kalawati and issued injury report Ex. Ka.7 and Dr. Ramji Pandey P.W. 4 conducted autopsy on the dead body of Kalawati and issued post mortem report Ex. Ka.8. Injuries on Kalawati and the result of post mortem examination has already been stated above.

15. Dr. H.M. Pandey, P.W. 5 had examined injuries of informant Bechan on 17.4.1981 at 2:35 a.m. At Primary Health Centre Chatra District Mirzapur and issued injury report Ex. Ka.9. According to him following injuries were found on Bechan.

i) Contusion 14 cm x 2 cm, red in colour oblique in direction present in lower part of right side of Back of chest. 3 cm below Lower border of scapula & at level of 10th dorsal spine.

ii) Abrasion 7 cm x 3 cm vertical in direction present at right side of back of chest in lower part just above injury No. (1) from its lateral end.

iii) Traumatic swelling 14 cm x 10 cm present in upper and middle third part of outer surface of left fore arm, starting from the left elbow joint.

iv) Traumatic swelling 4 cm x 4 cm present at lateral half part of dorsum of left hand.

16. He opined that all these injuries except injury No. 2 was caused by blunt object and they were simple in nature and were fresh.

17. Kamla Kant P.W. 1 and Janardan Dubey P.W. 2 are formal witnesses of inquest and of carrying dead body to mortuary for autopsy.

18. Ali Hyder H.C.P.W. 10 had registered the case on written report and Bhola Prasad P.W. 12 is first investigating officer while Prabhu Nath Ojha P.W. 11 is second investigating officer who submitted charge sheet. They had given their testimony with regard to duty performed by them.

19. In order to challenge the veracity of prosecution version and also of its witnesses, defence filed copies of the affidavits of Trilok Singh, Ram Chandra Singh, Bachau and Hari Das as Ex. Kha.1 to Kha.4. These affidavits had been given by them before Munsif Magistrate Robertsganj in which they had deposed that they had not witnessed the incident and know nothing about it. Out of them Bachau, Hari Das and Ram Chandra have been mentioned in the first information report itself as eye witnesses of the occurrence while Bachau and Ram Chandra have also been examined by the prosecution in this case as P.W. 8 & P.W. 9 but Hari Das had not been examined.

20. Three witnesses have been examined by the defence with a view to prove the fact that the aforesaid persons had filed their affidavits in the court of Munsif Magistrate in this crime. Sri Prem Kumar Advocate D.W. 1 was the Oath Commissioner working at Robertsganj and maintained due record of the business conducted by him in the capacity of Oath Commissioner. On the basis of the entry made in the register, he stated the fact that on 30th July 1981, Ram Chandra and Trilok had sworn their affidavits before him. They were identified by Udit Narain Singh Advocate. The contents of the affidavit were read over to the deponents where after they signed and verified them. Similarly Gyan Prakash Srivastava, D.W. 2 is another Advocate who was working as Oath Commissioner at Robertsganj in July 1981. He also confirmed the fact that on 23rd July 1981 Bachau and Hari Das had sworn the affidavits Ex. Kha.3 and Ex. Kha.4 before him. Sri Basantu D.W. 3 was Reader in the court of Munsif Robertsganj in July 1981. He deposed in the trial court that affidavits of Hari Das, Bachau and of Trilok and Ram Chandra were placed before the then Presiding Officer Har Mangal Singh who had directed them to place on record. He identified this signature and writing of the Magistrate making the aforesaid endorsement.

21. We have heard Sri P.N. Misra, learned Counsel for the appellant and Mr. Sudhindra Kumar, learned AGA. for the State and have gone through the entire evidence on record.

22. Sri Misra has argued that the evidence adduced in the case by prosecution is wholly unreliable, improbable and untrustworthy. Learned Counsel has pointed out . several contradictions in the testimony of the witnesses and has submitted that the witnesses have on all material points tried to improve the prosecution story. It was argued that the first information report was ante-timed and there was four days delay in sending the special report of the crime to Senior Officers. In support of his argument Mr. Misra has also pointed out that full particulars of the crime and crime number are missing from "Chitthi Mazrubi " which was issued by the police while referring Kalawati and Bechan to doctor for medical examination. He has further argued that the motive for the commission of the crime as suggested by the prosecution was no motive at all and a simple dacoity case has been tried to be given shape of murder by the appellant. Mr. Misra argued that since very inception ,the complainant and the witnesses were not speaking the truth. It was on account of this alone that the first information report which was initially registered at the police station as Crime No. 37 under Section 395 and 397 IPC was altered after two or three days under Section 302/148/323/149 IPC by the investigating officer himself.

23. As against this, AGA has argued that both the accused Dulare and Jhigai were well known to the complainant from before and he had no motive to falsely implicate them. According to him, the prosecution had fully proved the charge.

24. We have carefully analysed the entire evidence and shall be discussing the points raised before us one by one.

25. First of all let us consider the manner in which the first information report was scribed and the crime was registered at the police station and also the manner in which the investigation commenced. Bechan P.W. 6 is the first informant who had deposed that after the incident it took 10 to 20 minutes to make arrangement of cot for shifting his wife Smt. Kalawati to the police station. He himself along with his son Prem Nath P.W. 7 and witnesses Raj Kumar, Shiv Kumar alias Kotari left for the police station with injured Smt. Kalawati being carried on a cot. On their way to police station a written report was got scribed in village Bakwar through Pratap Narain. This scribe however, did not accompany the informant to the police station.

26. In conformity with deposition of Bechan P.W. 6 , Head Moharrir Ali Hyder P.W. 10 of the Police Station Punnuganj stated that the informant had reached police station at 1:45 a.m. on 17.4.1981 and the case was immediately registered and two injured Kalawati as well as Bechan were despatched for medical examination along with "Chitthi Mazroobi" Ex. Ka. 13 and Ex. Ka.14. He also stated that S.I. Bhola Prasad Yadav, P.W. 12 left for the place of occurrence immediately.

27. S.I. Bhola Prasad Yadav P.W. 12 also claimed that the first information report was registered at the police station in his presence . He recorded the statement of first informant Bechan at the police station itself. The injured were sent for medical examination and in the night itself this witness along with other police force left for the place of occurrence and reached there at 3 'O' clock in the night. He further claimed that in the night itself he made search of the accused persons ,prepared site plan , collected blood stained and plain earth in presence of the witnesses and recorded statement of witnesses Hari Das and Ram Chandra.

28. Reading together the above deposition of Bechan P.W. 6 Ali Hyder P.W. 10 and S.I. Bhola Prasad Yadav P.W. 12 it first gave an impression that the first information report was promptly lodged and the investigation commenced without delay. Two appellants were named in the first information report and it may appear that the prosecution story could not be disbelieved easily. A careful scrutiny of the complete depositions of the aforesaid three witnesses would however, reveal the truth that the first information report was ante-timed and the investigation was tainted, fictitious and wholly unreliable.

29. Firstly it is to be noticed that the investigating officer Bhola Prasad Yadav P.W. 12 had not recorded the statement (under Section 161 Criminal Procedure Code) of Prem Nath at the police station itself although he was the son of the informant and accompanied him to the police station and he was the person who was in fact the target of accused persons. The deposition of second investigating officer Prabhu Nath Ojha, P.W. 11 shows that the statement of Prem Nath P.W. 7 was recorded by him on 27.4.1981 i.e. About ten days after the incident. The explanation given by Bhola

Prasad Yadav P.W. 10 that Prem Nath was not available for statement as he had gone to Mirzapur appears is only a concocted excuse so as to cover up the delay in recording the statement.

30. The claim of investigating officer Bhola Prasad Yadav P.W. 12 that immediately after lodging of the first information report he recorded the statement of Bechan P.W. 6 and left for the place of occurrence where he made spot inspection and recorded the statement of witnesses is also false and pretentious. In this connection the informant Bechan P.W. 6 has explicitly stated in the trial court that the investigating officer was not available at the police station when the first information report was registered. He stated that he had not seen the investigating officer there. He also denied that the investigating officer had recorded his statement (under Section 161 Criminal Procedure Code) at the police station after registration of the case. According to him he was interrogated by the investigating officer eight days after the incident. He also stated that the investigating officer had visited his village only eight days after the first information report was lodged. This statement of Bechan P.W. 6 falsifies the claim of the investigating officer that the first information report was promptly lodged and he commenced the investigation forthwith. The fact that Prem Nam's statement was not recorded till 27.4.1981 also goes to demolish the claim of the investigating officer.

31. Not only this, there are yet other circumstances which go to indicate that the police had been preparing papers ante-time or atleast they had full opportunity of doing so. The informant Bechan P.W. 6 has candidly admitted that the copy of the first information report was not supplied to him at the police station. Head Constable Ali Hyder P.W. 10 has sated in the trial court that the special report of this crime was sent after four days i.e. On 21.4.1981. He also admitted that no senior officer was intimated about this crime prior to 20th April 1981. In the general diary of the police station it was noted by him that a special report of the incident would be sent after the investigating officer returns after making visit to the village Naraga and inspecting the place of occurrence. The investigating officer Bhola Prasad Yadav P.S. 12 returned to the police station on 19.4.1981 at 12.50 p.m. and altered the crime from Section 395/397 to Section 307/147/148/149 IPC. if all that was true , the special report should have been sent at least on 19.4.1981. The inordinate delay in sending the special report also is an indicative of the fact that the documents and entries were ante-timed. The Head Constable Hyder Ali P.W. 10 also admitted the fact that crime number as well as name of the accused were not mentioned by him in the two Chitthi Mazrubi issued from the police station after registration of the crime for medical examination of Smt. Kalawati and Bechan. He also admitted that Circle Officer of the police station used to sit at Robertsganj which was approachable by a motor car within 1 1/2 hours from the police station. A copy of the chik report which was sent to the circle officer bears his endorsement made on 20.4.1981. Inference drawn from cumulative consideration of all circumstances definitely would be that the first information report as well as other relevant documents were ante-time and the investigation was tainted and unfair. The investigating officer made fake entries in the case diary. There is great force in the argument of the defence that scribe Pratap Narain was called by the police subsequently and a written report was got scribed.

32. It may further be noted that although this Pratap Narain of village Bakwar obliged the informant to scribe the report in the night at about 1 'O' clock but he did not accompany the informant to the police station. Similarly witnesses Hari Das, Ram Chandra and Bachau who claimed to be eye

witnesses of the occurrence did not accompany the informant to the police station in the night for lodging the report but strangely enough they were available in village Narga at or about the place of occurrence enabling the investigating officer to record their statement in the night at 3.00 a.m. itself. S.I. Bhola Prasad Yadav P.W. 12 in his deposition stated that he had recorded the statement under Section 161 Criminal Procedure Code of Hari Das and Ram Chandra on 17.4.1981 in the night itself after 3.00 a.m. In the circumstances mentioned above, this appears to be highly improbable. It is further improbable that Pratap Narain Sinha who was residing about one mile away from village Naraga and who had not accompanied the informant to the police station would have come in the night itself to village Naraga so as to become a witness on recovery memo Ex. Ka. 22 of collection of blood stained and plain earth by the investigating officer on 17.4.1981 itself. The prosecution has not examined the scribe to throw further light on this point.

33. In back ground of these discrepancies let us examine the deposition of eye witnesses of the occurrence. Out of four eye witnesses Bachau P.W. 8 and Ram Chandra P.W. 9 are the witnesses who had filed their affidavits earlier before the Magistrate concerned stating that they had not seen any occurrence at all. The fact that they gave their affidavits is established from the statement of Prem Kumar Advocate/Oath Commissioner D.W. 1, G.P. Srivastava Advocate/Oath Commissioner D.W. 2 and Sri Basantu reader in the court of Magistrate Robertsganj D.W. 3. Sri Basantu had stated that in July 1981 he was reader in the court of Munsif Robertsganj and the aforesaid witnesses Ram Charan, Hari Das and Bachau had filed their affidavits on 25.7.1981. He also proved the endorsement of presiding officer on the affidavits to the effect that they may be kept on file. Two Advocate/Oath Commissioners Prem Kumar and G.P. Srivastava D.W. 2 have clearly stated that the affidavits of Ram Chandra and Bachau were sworn before them and the contents of the affidavits were read over to them before they put their thumb impression /signature. This testimony was given on the basis of entries made by by them in the register maintained in due discharge of their duties as Advocate/Oath Commissioners. Nothing could be elicited by the prosecution from their testimony to render it unreliable. Even Bechan P.W. 8, Ram Chandra P.W. 9 failed to give explanation about these affidavits. Their statements in the court that they had put their thumb impression /signature on the persuasion of brother of appellant Ram Dulare who begged them to help to get Ram Dulare released on bail is not believable. Thus the testimony of Bachanu P.W. 8 and Ram Chandra P.W. 9 is highly suspicious and does not inspire any confidence.

34. The testimony of informant Bechan and his son Prem Nath also indicates that probably Bachau and Ram Chandra with other witnesses reached the place of occurrence after the culprit had already left . It is significant to note that a single shot was fired causing injury on the face and mouth of Smt. Kalawati . No property was looted. The first information report as well as the testimony of Bechan P.W. 6 shows that as soon as the shot struck Kalawati, she fell down, one of the malefactor remarked that the lady had died and exhorted his companion to run away and they ran away. Suspicion also arises from the statement of, Bechan P.W. 6 that the house of-Hari Das, Bachau and Ram Chandra were about 200 to 250 paces away from the place of occurrence. It is therefore, not possible that the witnesses would have reached to the place of occurrence and had seen the faces of the culprit Ram Dulare and Jhigai amongst them. The first information report Ex. Ka. 11 mentions that the malefactors ran away from the place of occurrence only after the informant's son Prem Nath had come out and witnesses Hari Das, Bachau and Ram Chandra had gathered there. It is highly

improbable that after making shot killing Kalawati the culprits would remain standing there without any purpose till the witnesses reach and recognise them. Informant Bechan P.W. 6 had stated that he took him 10 to 20 minutes to arrange for cot so as to shift Kalawati to the police station and the witnesses had started gathering after the said arrangement were made. Thus, this circumstance also shows that the witnesses had no opportunity to see faces of the culprits or dacoits.

35. The motive for commission of the crime also is so weak that it can hardly be believed . The first information report Ex. Ka. 11. shows that the malefactors who had reached at the place where the informant was sleeping asked him to call his son out. Prem Nath P.W. 7 also says that these culprits had come to kill him but mistakingly they had fired on his mother Kalawati who had opened the door. If that was true, then it is not understandable why first informant lodged a report indicating the incident to be the case of the dacoity. Surely it was not a case of dacoity as the police later on altered the description of the crime registered at the police station. Now if the purpose of the culprits was to annihilate Prem Nath P.W. 7, then it is difficult to believe why they did not make any attempt on Prem Nath even if he had come out and had raised alarm along with the informant Bechan to seek help. The evidence adduced by the prosecution clearly shows that the culprits had decamped only after Prem Nath and other witnesses started shouting for help.

36. The first information report Ex. Ka. 11 describing the motive for commission of crime says that this crime has been committed on account of old enmity. The first information report does not give details of the previous enmity. The prosecution however, tried to develop it in the course of production of evidence in the trial court. According to Bechan P.W. 6, Babu Lal son of Jhigai had quarrelled with the son of

37. Hari Das about a month ago on the issue of grazing the catties. On the same day appellant Jhigai had come to village Narga to fight with Haridas and his son when Prem Nath. P.W. 7 made an inference and the two sides were pacified. The informant further says that about two or three days after this marpit, appellant Ram Dulare had rebuked Prem Nath P.W. 7 at the house of Dhandhari. Prem Nath P.W. 7 son of the informant to the contrary stated that the appellant Ram Dulare had rebuked him only about two days prior to the present incident. Thus, there is material contradictions in the statement of Bechan P.W. 6 and Prem Nath P.W. 7 on the question of motive relating to the crime. This in the light of the fact that the culprits had opportunity to cause death of Prem Nath or open an assault on him and they did not do so, makes the entire prosecution story highly doubtful. We therefore, find the entire prosecution evidence wholly unreliable investigation tainted and undependable witnesses also being unreliable. It appears to us that after some incident had taken place, the first informant in consultation with others and with the help of police lodged an anti-timed report implicating the appellants.

38. Resultantly this appeal is allowed. The conviction and sentences of appellant Ram Dulare under all the charges is set aside. He is on bail. His personal bonds and sureties are discharged. He need not surrender . The appeal of Jhigai stood abated on 17.5.2007 as he died during pendency of appeal.

39. Let a copy of this judgment be certified to the trial court.