

Supreme Court of India

Ram Bhukan And Others vs State Of U.P. on 25 November, 1993

Equivalent citations: AIR 1994 SC 561, 1994 (1) ALT Cri 506, 1994 CriLJ 596, 1993 (4) SCALE 538, 1994 (1) UJ 9 SC

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Bench: K J Reddy, N Venkatachala

ORDER K. Jayachandra Reddy, J.

1. This is an appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act read with Section 379 Cr.P.C. There are three appellants. It is reported that appellant No. 3 Ram Bilas has died. Therefore we are concerned with the remaining two appellants. The three accused were tried under Sections 302/34 I.P.C. for causing the death of one Lal Singh. Appellant No. 2 Brij Bhukan was also charged under Section 324 I.P.C. for causing injuries to Ram Karan Kahar, P.W.2. The trial court acquitted all of them. The State preferred an appeal and the High Court relying on the evidence of eye-witnesses P.Ws. 2, 3 and 4 convicted them under Sections 302/34 I.P.C. and sentenced each of them to undergo imprisonment for life. Appellant No. 2 Brij Bhukan was also convicted under Section 324 I.P.C. and sentenced to undergo two years' R.I, Hence the present appeal.

2. The appellants, who are brahmins and the material witnesses are the residents of Village Shahbazpur District Pilibhit. Deceased Lal Singh was a Thakur and belonged to Village Nangawan District Shahjahanpur, which is about half a mile from Village Shahbazpur. P.W.2 Ram Karan Kahar belongs to Shahbazpur itself. Railway Station, Bilapur where this incident took place lies at a distance of about 8 miles from Shahbazpur and falls within the area of Police Station Fatehganj (East), District Bareilly. People from neighbouring villages used to board the trains at this Station to go to Bareilly and Shahjahanpur. There was a background of enmity between the accused and the deceased. Ram Bhukan, one of the appellants herein and his mother had been beaten up earlier and in that case, the deceased Lal Singh and others figured as accused. They were prosecuted but were acquitted. Again on 9.6.72 there were two cross reports about an incident which took place in Village Shahbazpur.

3. According to the prosecution on 25.6.74 the deceased alongwith P.W.2 came to Bilapur railway station for boarding a train for Bareilly to purchase the cattle. The deceased and P.W.2 went to platform No. 2 where they had some meals and waited for the train. At about 12.30 P.M. the three accused and two other came there from the east. Accused Ram Bhukan gave a knife blow to Lal Singh deceased. When P.W.2 tried to intervene, accused Brij Bhukan gave a knife blow to him. Both Lal Singh and Ram Karan started running towards the west. But the accused inflicted a number of knife blows on Lal Singh while he was running. They ultimately caught hold of him and killed him on the spot. The other two unknown person assaulted Lal Singh and Ram Karan with lathis. This occurrence was witnessed by P.Ws. 3 and 4 who happened to be there. A big crowd was also there. However, the accused managed to run away. P.W.2, who received injuries, gave a report at about 1.25 P.M. at Police Station Fatehganj East. P.W.13 S.H.O. registered the crime and proceeded to the place of occurrence. He held inquest over the dead body and sent the same for post-mortem. The doctor, who conducted the post-mortem, found as many as 19 injuries and most of them were

incised wounds and rest of them were abrasions and contusions. P.W.2 was examined by another doctor, who found on him a lacerated wound 3 cm X 0.25 cm on the head, an incised wound on the middle finger of left hand and three contusions over the back and shoulders. The prosecution relied on the evidence of the eye-witnesses P.Ws 2,3 and 4. The plea of the accused has been one of the denial and they pleaded that because of the enmity they were falsely implicated. They examined D.Ws. 1 to 3. D.W.1 was examined to show that P.W.3, Rajpal Singh is the brother-in-law of the deceased. D.W.3 was examined to speak about the earlier cross-reports dated 9.6.72. D.W.2, who was the Assistant Station Master of Bilapur Railway Station, deposed that while he was in the quarters he heard a hubbub and came out and saw an injured person running obviously referring to P.W.2, who on being asked told him that some unknown assailants had killed his friend. The trial court held that the three eye-witnesses P.Ws. 2, 3 and 4 are the most interested witnesses and the fact that P.W.2 told D.W.2 that some unknown persons killed the deceased, would show that he could not identify the assailants and that after his relations came there were consultations and thereafter the accused were falsely implicated. In this context the learned Sessions Judge also relied on the evidence of P.W.12, the Station Master, who to some extent supported the version given by D.W.2.

4. It may be mentioned at this stage that the time, place and manner of occurrence are not in dispute. The only dispute is regarding the identity of the assailants. We have perused the judgment of the trial court and the learned Sessions Judge excluded the evidence of the three eye-witnesses mostly on the basis of the evidence given by P.W.12 and D.W.2. As a matter of fact, P.W.12 was treated hostile. Even assuming that P.W.12 and D.W.2 enquired P.W.2, who having received the injuries and having witnessed a ghastly occurrence was running to give a statement and that apart P.W.12 and D.W.2, though they are railway officials, P.W.2 could not be expected to give a report to the railway officials. D.W.2, however, was only in his quarter, not even on duty. We find from the judgment of the trial court that the evidence of the eye-witnesses particularly the injured witness has not been considered in a proper perspective. On the other hand straightaway, the learned Sessions Judge started stating that the crucial question in the case was the effect of evidence of P.W.12 and D.W.2.

5. However since this is a regular appeal, we shall briefly refer to the evidence of the three eye-witnesses. P.W.2 is the most important witness. He deposed that he went along with the deceased to help him to bring the cattle and they took food and went to southern platform and sat down there. At that juncture, the three accused and two more persons reached there. They took out their knives and stabbed the deceased and when he intervened, accused Brij Bhukan inflicted an injury on him with knife and the other two unknown accused also beat him. He also deposed about the further attack on the deceased. He stated that many people gathered there. Then he went to the police station and gave a report. In the cross-examination he stated that the three witnesses enquired him as to what had happened and he told them that a person had been murdered and on being enquired how the dispute arose, he did not give any reply since they themselves had seen the occurrence. Another criticism against the evidence of this witness is that his statement under Section 161 Cr.P.C. was not recorded immediately. We think this by itself is not a circumstance which affects his veracity because he had given the F.I.R. and this version is there. Then it was suggested to him that Rajpal Singh, brother-in-law of the deceased came and after consultations the

report was given. He denied that Rajpal Singh was the brother-in-law of the deceased. To prove this relationship D.W.1 was examined. Assuming that there is such relationship, we do not think that the same by itself is a ground to reject the evidence of this witness on the ground that there was some delay in giving the report. Then he was cross-examined with reference to the motive and he specifically denied in the cross-examination saying that "it is wrong to say that he told the Station Master that he did not recognise the assailants". The cross-examination on other aspects need not be gone into. At this stage, it may be mentioned that the Sub Inspector of Police clearly deposed that P.W.2 came and gave the report in which all these details are given. P.W.2's evidence has been amply corroborated by the evidence of P.Ws.3 and 4. If really P.W.2 was giving a false report, he would not have mentioned about the two unknown persons. The whole version given by him looks very natural.

6. Now, we may consider the evidence of P.W.12 and D.W.2 which has been relied very much by the defence. P.W.12 on the relevant date was working as Station Master, Bilapur. On the date when he gave the evidence, he had retired from service. He deposed that his duty at the Station was from 10 A.M. to 4.30 P.M. on 25.6.74, the day of occurrence. He used to issue tickets and also attend the telephones and to the passing trains. He further deposed that on that day one person was murdered at about 1 P.M. and he was in the office at that time when he came put at about 12.45 P.M. for showing the flag to the express train, he saw some persons running. After the train had passed at about 1.30 P.M. civil police came and he told them that he has noted about this occurrence in his diary. He did not say anything in his chief examination about having seen any injured person running. Then in the cross-examination he started saying that the second injured person was running through the platform and that he stated on enquiry from several persons that his companion had been murdered and that he was going to the police station. Then the defence counsel persistently questioned him whether that person who was running told him that he had identified the assailants or not. To this, P.W.12's answer was that he told that he had identified them. To yet another question P.W.12's answer was that the injured person told that he did not remember about the names. Then his attention was drawn to an affidavit which was filed by him. He then proceeded to state that he enquired from the injured person whether he was acquainted with those persons for which he was told that he was not acquainted with them. This witness was treated hostile and he was questioned by the prosecution whether he had noted all these details in Ex. Kh-4, his diary, for which he stated that he was not written that the witness met him or that he had talked with him. We find that many of the answers given by him in the cross-examination by the prosecution indicate that he was obliging the defence. At any rate on this kind of ipse dixit of the witness, the evidence of the eye-witnesses including the injured evidence, can not be discarded. D.W.2 was the Assistant Station Master. He deposed that on that day he was taking rest in his quarter and he came out on hearing noise from platform no,2 and he saw some kind of rioting going on. He came to know that the matter was relating to teasing the girl. He also went there and saw an injured person and he and others enquired him for which he told them that he could recognise those persons when face to face and that he was not acquainted with them. In the cross-examination he stated that he did not see the girl who was teased. He admitted that he saw the assailants also running but stilted that he can not recognise them. His evidence shows that he introduced a new theory that occurrence was due to teasing of girl. We find that his evidence is rather vague and on the basis of such a vague evidence, the evidence of the eye-witnesses can be discarded. Even

otherwise in that confusion and having witnessed a ghastly occurrence and having himself received injuries, P.W.2 can not be expected to go about giving details to each and everybody enquiring.

7. The learned Sessions Judge mostly relied on the evidence of these two witnesses simply brushing aside the evidence of the three eye-witnesses including that of the injured witness. The reasons given by him for acquitting the accused, in our view, are wholly unsound. The High Court had considered the evidence of the three eye-witnesses and that of P.W.12 and D.W.2 and has rightly held that the view taken by the Sessions Judge was highly unreasonable. For all these reasons, we see no ground to interfere. In the result the appeal abates so far as appellant No. 3 Ram Bilas is concerned and is dismissed so far as the remaining two accused Ram Bhukan and Brij Bhukan are concerned.