

Supreme Court of India

Rampukar Rai And Ors. vs State Of Bihar on 10 February, 1993

Equivalent citations: 1993 (1) ALT Cri 649, 1993 (1) Crimes 706 SC, JT 1993 (2) SC 97, 1993 (1) SCALE 487, 1993 Supp (2) SCC 362

Bench: K Singh, P Sawant

JUDGMENT

1. Ram Agya Rai and seven others were charged with the murder of Radhey Shyam Rai and were tried for the offences under Sections 302/149, 148 147 Indian Penal Code and 27 of the Arms Act. Ram Agya Rai was convicted under Sections 302 IPC, 148 IPC and was sentenced to imprisonment for life. He was also sentenced to two years under Section 27 of the Arms Act. All other accused were sentenced to life imprisonment under Section 302/149 Indian Penal Code. Accused Ram Agya Rai, Parashu Rai, Ram Pukar Rai, Sheo Murat Rai and Nand Jee Rai were further convicted under Section 148 IPC and were sentenced to two years rigorous imprisonment each. Accused Bigan Rai, Deonagar Rai and Nathuni Kahar were further convicted under Section 147 IPC and were sentenced to one year rigorous imprisonment each. Two criminal appeals were filed before the High Court. Ram Agya Rai filed a separate appeal and Parashu Rai and six other convicts filed the second appeal. The High Court dismissed both the appeals by a common judgment. This Court by its order dated April 6, 1992 dismissed the special leave petition filed by Ram Agya Rai. This appeal through Superintendent, Central Jail Buxar (Bihar) is on behalf of Ram Pukar Rai, Parashu Rai, Shiv Murat Rai, Nand Jee Rai and Dev Nagar Rai.

2. The prosecution case, in a nut-shell, is that Radhey Shyam Rai deceased was sleeping in his Khalian on the night between December 30/31, 1984. His brother Ram Bachan Rai, the first informant, was also sleeping near-by. At about 2/2.30 A.M. on the barking of the dogs Ram Bachan Rai woke up and in the torch light he saw Ram Agya Rai with single barrel gun, Parashu Rai, Ram Pukar Rai armed with Bhalas, Sheo Murat Rai, Nand Jee Rai armed with Garasas and Bigan Rai, Deonagar Rai and Nathuni Kahar armed with lathis surrounding his brother Radhey Shyam Rai. Parashu Rai and Ram Pukar Rai shouted that Radhey Shyam Rai had not allowed them to thrash their paddy in his Khalian and immediately thereafter Ram Agya Rai fired a shot which hit Radhey Shyam Rai in the head. There after all the accused fled away from the place of occurrence saying that if any one chased them he would be killed. Radhey Shyam Rai was taken to the hospital on a cot but he died before reaching the hospital. According to the informant the deceased had told him that it was Ram Agya Rai who had injured him by firing the gun shot.

3. The prosecution examined 11 witnesses. P.W. 9 Ram Bachan Rai brother of the deceased, is the informant and the only eye-witness. P.W. 3 Paras Nath Singh, P.W. 5 Saket Bihari Singh and P.W. 7 Ramjee Rai are the witnesses who supported the testimony of P.W. 9 Ram Bachan Rai.

4. P.W. 5 Saket Bihari Singh is the youngest brother of the deceased. He has stated that he was sleeping at his Dalan when he heard the sound of gun-shot. Thereafter he got up and rushed towards his Khalian where he found his elder brother Radhey Shyam Rai in injured condition. He further stated that his brother Ram Bachan Rai, the informant told him about the alleged occurrence and also the fact that he had identified, in the torch-light, all the accused persons along with their

respective weapons.

5. P.W. 7 Ram Jee Rai deposed that at about 2.30 A.M. on the night of occurrence when he had gone out for urinating he heard the gun shot sound. His Khalian, where he was sleeping, was at a distance of two hundred yards from that of the deceased. He took his lathi and torch and rushed towards the place of occurrence. Having proceeded about hundred yards he flashed his torch, on hearing some movement, and found the eight accused persons along with their weapons, coming from the side of the Khalian of the deceased. He stated that he had identified all the accused persons with their weapons. When he reached the Khalian of Radhey Shyam Rai he found him lying in injured condition. He further stated that Ram Bachan Rai told him about the occurrence.

6. P.W. 3 Paras Nath Singh in his testimony has stated that on the night of occurrence he was sleeping in his Khalian about 20/25 yards away. At about 2/2.30 A.M. he woke up on the barking of the dogs. He heard human voices and sound of a gun shot from the side of the Khalian of the deceased. He stated that he hid himself behind the heap of paddy and saw the eight accused persons by flashing the torch which he was carrying along with him. He further stated that he identified them along with their respective weapons,

7. The testimony of P.W. 5 Saket Bihari Singh is of no help because he reached the place of occurrence much after the accused had left. He neither saw the occurrence nor the accused persons. He was sleeping at his Dalan and came to the place of occurrence after hearing the gun-shot. He heard about the occurrence from his brother Ram Bachan Rai.

8. P.W. 9 Ram Bachan Rai, the informant, is the only eye-witness to the occurrence. He is the brother of the deceased. Learned counsel for the appellants contended that the statement of Ram Bachan Rai that his brother told him on way to hospital that the gun-shot which injured him was fired by Ram Agya Rai, was totally false. According to the learned Counsel, the bullet pierced through the head of the deceased, the brain matter was protruding through the exit wound and according to the medical evidence it was not possible for the deceased to have talked after the receipt of the gun-shot injury. The counsel thus contended that Ram Bachan Rai is not a reliable witness. He further contended that in the presence of deceased at the Khalian there was no necessity of another person to be there to guard the paddy. We are not inclined to rule out the presence of Ram Bachan Rai at the place of occurrence but we are of the view that his testimony has to be accepted with utmost scrutiny and caution.

9. So far as P.W. 3 Paras Nath Singh and P.W. 7 Ram Jee Rai are concerned, the story put forward by them does not inspire confidence. Both Paras Nath Singh and Ram Jee Rai have deposed that they woke up before the gun shot was heard. Paras Nath Singh woke up on hearing the barking of dogs and Ram Jee Rai for urinating. In the cross-examination Paras Nath Singh admitted that he was hard of hearing. One can imagine the possibility of their getting awake as a result of the sound of gun-shot but the stock reasons given by these witnesses for waking-up from sleep before the gun-shot was fired, do not sound probable. It was obviously done to give them sufficient time to rush towards the place of occurrence and in the process see and identify the accused persons. The way these witnesses have been shown to be flashing their torches to identify the fleeing murderers,

make their testimony highly improbable. It is further obvious from the statements of P.W. 3 Paras Nath Singh, P.W. 7 Ramjee Rai and P.W. 5 Saket Bihari Singh that there was previous enmity between these witnesses and the accused party. P.W. 3 Paras Nath Singh has admitted having litigation with Ram Agya Rai and Parashu Rai. P.W. 9 Ram Bachan Rai stated that Nathuni Kahar had filed a criminal case against him, P.W. 3 Paras Nath Singh and P.W. 7 Ram Jee Rai. We have been taken through the statements of P.W. 3 and P.W. 7 by the learned Counsel for the appellants. We are satisfied that it would not be safe to seek corroborations from their testimony.

10. Except the gun-shot wounds entry and exit- on the head, there was no other injury on the person of the deceased. The medical evidence corroborates the testimony of P.W. 9 Ram Bachan Rai to that extent. The gun-shot injury has been imputed to Ram Agya Rai whose special leave petition has already been dismissed.

11. Apart from Ram Agya Rai no overt act has been imputed to any of the appellants. It is difficult to believe that the appellants were accompanying Ram Agya Rai to commit the murder and still restrained themselves from using their respective weapons.

12. We have given our thoughtful consideration to the question of involvement of the appellants in the crime. We have not been able to satisfy ourselves that the case against them has been proved by the prosecution beyond reasonable doubt. We give benefit of doubt to the appellants. We, therefore, allow the appeal, set aside the conviction and sentence of the appellants on all the counts and acquit them. We direct that they be released forthwith.

13. Before parting with the judgment we may mention that Bigan Rai and Nathuni Kahar, co-convicts of the appellants, have not come up to this Court by way of special leave petition. We place it on record that their cases are identical to that of the appellants.