

# **Rameshwar Ram, Sub Inspector Son Of Late ... vs The State Of U.P. on 8 August, 2007**

**Author: Ravindra Singh**

**Bench: Ravindra Singh**

## **JUDGMENT**

Ravindra Singh, J.

1. This application has been filed by the applicants Rameshwar Ram, Sub Inspector, Ashok Kumar Constable No. 753 and Ravindra Maurya Constable No. 657 with a prayer that they may be released on bail on Case Crime No. 63 of 2006 under Sections 147, 148, 149, 302, 218 and 34 I.P.C., P.S. Pipri , District Sonebhadra.

2. The prosecution story in brief is that the F.I.R. of this case has been lodged by Kashinath Singh, Inspector C.B.C.I.D. varanasi on 21.2.2006 at 6.45 P.M. At P.S. Pipri in respect of the incident which had occurred on 2.9.2003 in case crime No. 63 of 2006 (C.B. No. 342 of 2006) under Sections, 147, 148, 149, 302, 201, 218, 342, 34 IPC, against the applicants and twelve other co-accused persons. Its F.I.R. has been registered after conducting the preliminary enquiry which was entrusted to the C.B.C.I.D. by Additional District Magistrate, Sonebhadra because the District Magistrate, Sonebhadra has directed the A.D.M. for conducting magisterial inquiry, who submitted the inquiry report dated 17.8.2004 with recommendation that the investigation of this case may be entrusted to C.B.C.I.D. because in the alleged incident dated 2.9.2003 two persons were killed in a fake police encounter. The recommendation of the Additional District Magistrate, Sonebhadra has been accepted by the State Government and the investigation of this case was transferred to C.B.I.D. from civil police, Sonebhadra. In a preliminary inquiry the C.B.I.D. came to the conclusion that the deceased persons namely Prabhat Kumar and Rama Shanker along with Ram Pravesh and Jai Shanker who were apprehended by the police from the platform of railway station Jharokhas when they had come down from a train to take the water. They travelling in a train which was stationed there for the purpose of crossing the other train, Ram Pravesh and Ram Shanker were taken up by the police in a jeep but after covering some distance they were taken in a bus to the police out post Dala but the deceased Prabhat Kumar and Rama Shanker were taken by the police in another train and they were taken down from the train at railway station Renukoot. It was witnessed by the public subsequently the police has shown an encounter with the miscreants and lodged the F.I.R. at P.S. Pipri in case crime No. 321 of 2003 under Sections 147, 148, 149, 307 IPC and case crime No. 320 of 2003 under Section 25 Arms Act, It was lodged by S.S.I. Jai Nath Misra, on 2.9.2003 at 3.30 P.M. alleging therein that applicants and 12 other co-accused persons came in search of the miscreants who had committed the bus robbery in the night of 1/2.9.2003 in a jungle, at about 12.30 P.M., the miscreants discharged the shots towards the police party, in the self defence the applicants and

other police personnel also discharged the shots consequently two miscreants (the deceased of this case) lost their lives whose dead bodies were found in the jungle near the dead body of a miscreant one country made pistol and four empty cartridges were found and from the possession of another miscreant one S.B.B.L. gun, five empty cartridges and four live cartridges in his belt were found, but in the said incident no police personal sustained any injury. The dead bodies of the miscreants could not be identified, after preparing the inquest report the dead bodies were sent to the mortuary. The story of the police showing encounter was absolutely false and baseless, therefore, the District Magistrate, Sonbhadra set up a Magisterial inquiry in which it was found that story set up by the police was false and concocted and all the police personnel who were claiming that they fired at the miscreants in the self defence have been made accused in the present case. The post mortem examination reports show that one of the deceased had sustained two fire arm wounds of entry, two exit wounds, two other abrasions and another deceased had sustained two gun shot wounds of entry, two exit wounds and one abrasion. The applicants, and other co-accused have killed two innocent persons thereafter a false story of police encounter has been concocted. The applicants applied for bail before learned Sessions Judge, Sonbhadra, who rejected the same on 18.5.2007, being aggrieved from the order dated 18.5.2007 the present bail application has been filed by the applicants.

3. Heard Sri Yogendra Yadav, learned Counsel for the applicants, learned A.G.A. and Sri P.K. Singh, learned Counsel for the complainant and perused the record including the case diary.

4. It is contended by learned Counsel for the applicants:

(i) That in the night of 1/2.9.2003 at place of Rantola, P.S. Duddhi, District Sonbhadra the passengers of the bus were robbed, its F.I.R. was lodged against the unknown persons in crime No. Nil of 2003 under Section 392/323 IPC at police out post, Renukoot, thereafter it was registered as case crime No. 381 of 2003 at P.S. Duddhi, the investigation of this case was initiated and a team for combing purpose was conducted, the team was in search of miscreants in the forest but on getting a clue in respect of some miscreants, the combing police party surrounded the miscreants at about 12.30 P.M. on 2.9.2003 the miscreants were asked to surrender but the miscreants opened the fire at the police party, in self defence the firing was also done by the police party including the applicants consequently two miscreants lost their lives and remaining miscreants successfully fled away, even the deceased persons were not known to the police party, they were unknown, their inquest reports and post mortem examination reports were also prepared as unknown miscreants and from the possession of the deceased persons country made pistol and S.B.B.L. gun having empty cartridges in the barrels were also recovered. The deceased persons were not having any enmity with the police. The story of the encounter given by the applicants is natural and trustworthy.

(ii) That in the present case the allegation that the deceased persons were apprehended by the police from the police station Jharokhas but no body has named the applicants in the statements recorded under Section 161 Cr.P.C, it is a vague

allegation, even during investigation no specific allegation has been made against the applicants.

(iii) The applicants were having no motive or intention to commit the alleged offence.

(iv) The Prosecution story is corroborated by the medical evidence and there is no evidence to show that the deceased persons were beaten by the applicants prior the alleged incident and there is no evidence to show that the deceased were killed in some other manner.

(v) In the present case the fair investigation has not been done because the statements of the witnesses who were present near the place of the occurrence have not been recorded, even the prosecution has failed to collect the evidence to show that no police encounter has taken place. The I.O. has submitted the chargesheet mainly on the basis of magisterial inquiry and suspicion in the encounter the police of some other police station also participated; its information has been given to the superior officers of the police.

(vi) The applicants are police personnel, they are State government servant, they are having no criminal antecedent, and they undertake that they shall not temper with evidence and they shall cooperate with trial, therefore, they may be released on bail.

5. In reply of the above contentions, it is submitted by learned A.G.A. and learned Counsel for the complainant that in the present case two unknown persons who were apprehended by the police from the Jharokhas railway station have been killed subsequently by the police showing a police encounter. The deceased were not dacoits nor they were involved in any criminal cases prior their killing, one of the deceased Prabhat Kumar was student of the Allahabad University. After killing the deceased person in some other manner the applicants and other co-accused persons concocted a story of police encounter alleging that the deceased persons were lost their lives in a police encounter and the recovery of country made pistol and S.B.B.L. gun alongwith cartridges have been planted by the police and no looted or stolen property has been recovered from the possession of the deceased. The story of police encounter is belied by the post mortem examination report. The number and nature of the injuries show that such injuries may not be caused in a police encounter but no police personnel has sustained any injury, even no public person has been made the witness of the aforesaid story. It is also surprising that according to the police version a bus was robbed by the miscreants in the night of 1/2.9.2003 but encounter has taken place at about 12.30 on 2.9.2003, the distance of the place where the robbery was committed and dead bodies recovered was 40 or 50 metres, it also belies the whole prosecution story because after committing robbery no miscreants shall stay at the same place after expiry of such a long period.

6. The F.I.R. lodged by the police showing the police encounter is highly doubtful because no other miscreant has been shown apprehended by the police at the time of the alleged encounter but subsequently two other persons namely Ram Pravesh and Jai Shanker who were also apprehended from railway station Jharokhas have been made accused and the recovery of one country made

pistol along with three live cartridges and Rs. 500/- has been shown from the possession of the Ram Pravesh and recovery of two live cartridges and two silver chain has been shown from the possession of the Jai Shanker. The recovered articles have not been identified by any person. It is further submitted that in the present case the magisterial inquiry was done in which it was found that the story of encounter shown by the applicants and other co-accused person was false, the deceased were innocent persons, they were apprehended by the police from Jharokhas railway station subsequently they have been killed. After magisterial inquiry the matter was handed over to C.B.C.I.D. during investigation I.O. recorded the statements of Jai Nath Mishra who was S.S.L of Duddhi on the day of alleged incident, he is also accused of the present case. He stated that in the night of 1/2.9.2003 at about 10 P.M. he left the police station in the company of other constable for the purpose of patrolling but in the night about 1.30 A.M. he received information that the bus has been robbed in the jungle of Rantoka, its information has been registered at P.S. Renukoot thereafter at about 8.00 A.M. On 2.9.2003 a wireless message has been given to police station concerned on the direction of the S.P. Sonebhadra he also came at the place of occurrence on 2.9.2003 and he also join the combing party, at about 12.30 P.M. the miscreants fired at the police party consequently two miscreants were found dead the from their possession one country made pistol and S.B.B.L. gun have been recovered, they could not be identified by any person, in that police encounter no police personal had sustained any injury. Its report was registered in case crime No. 321 of 2003 under Section 147, 148, 149, 307 IPC and crime case No. 322 of 2006 and 323 of 2006 under Section 25 Arms Act. The inquest report was prepared as of unknown miscreants but subsequently they were identified as Prabhat Kumar Arun and Rama Shanker Sahu. Thereafter S.I. Gopal Singh was sent to the native places of the deceased for the purpose of giving information and to hand over the dead bodies, but family members of the deceased did not want to take the dead bodies. Thereafter their cremation was done at the bank of Kanhat River. It has also been stated by the witnesses that the distance of the place of robbery and the place of recovery of dead bodies was about 40 to 50 metres. It is further stated that the miscreants were seven or eight in number. The statement of the co-accused Jai Narain Misra is absolutely false and concocted; it has been controverted by family members of the deceased also because they have stated that the information was given to them after doing the cremation. The statement of S.I. Gopal Singh has also been recorded who stated that on 3.9.2003 at about 3.35 AM he was going to attend the meeting after making the G.D. Entry but he was directed by the S.P. Sonebhadra to have contact with C.O. Pipri, he was apprised by C.O. Pipri that in the judge of Rankota two dead bodies of the miscreants namely Prabhat Kumar Arun and Rama Shanker Sahu have been identified, it information has to be given to their family members for the purpose of handing over the dead bodies, thereafter he went to the houses of the deceased but the family members were not ready to receive the dead bodies, its entry has been made in the G.D. Dated 3.9.2003. The statement of Lallan Prasad, the father of the deceased Prabhat Kumar Arun has been recorded, he has stated that he is a retired teacher and his deceased Prabhat Kumar Arun was student of Allahabad University. On 2.9.2003 he was going to his sister's house in a train, the train was stationed at Jharokhas station for the purpose of crossing of another train from where he was apprehended by the police subsequently he has been killed by showing a police encounter On 3.9.2003 at about 6.00 P.M. when he was going to offering worship, he was informed by the police that his son has been killed in a police encounter, he became unconscious and fell down, thereafter when he become conscrious, he came to his house but police has not informed about the place of the dead body, he came to his parently village in a jeep where he

says in the night but in the morning of 4.9.2003 he along with his brother came at P.S. Duddhi where he came to know that the dead body of his son were cremated, in the even of 3.9.2003, even the photo of the deceased was not given to him. He was apprised by some eye witnesses that the dead body was cremated on 3.9.2003 at about 4.00 P.M. and the police has done a fake encounter, he was not duly informed neither the dead body not the photo was given to him. Thereafter he gave the information to the police and other higher officers for registering the case but no action was taken by them. The same statement was given by the witness Ram Chandra, the uncle of the deceased Prabhat Kumar Arun. The I.O. recorded the statement of one witness Lakshman Thakur who gave the detail version about the arrest of the deceased from Jharokhas railway station. The statement of Bansidhar, father of the deceased Rama Shanker Sahu was recorded who also stated that neither the proper information was given nor the dead body was given to him and before his arrival his dead bodies of the deceased were cremated. It was supported by Ram Pravesh Sahu who was one of the victims. He also supported the prosecution story by submitting that he, Jai Shanker and deceased were also travelling in a train, he was also apprehended by the police from the Jharokhas railway station where the train was stationed on account of crossing of another train, he along with Jai Shanker were taken by the police in a jeep subsequently by a bus to the police out post Dala, they were detained in the lock up of P.S. Chopan where Munna Dubey was also present, he was also detained in the same lock up subsequently he heard the wireless message that Prabhat Kumar and Rama Shanker have been killed in a police encounter and for the purpose of their identification he was called but it was also heard by him that he was brother of Rama Shanker, therefore Jai Shanker be sent for the identification. On the next day Jai Shanker was taken to the identification, he and Munna Dubey were taken to the Kotwali Robertsganj, thereafter they were produced in the court and sent to the jail in a false case of robbery. The same statement was given by the Jai Shanker Prasad Gupta. The statement of Station Officer S.V.P. Sahu was also recorded by the I.O who clearly stated that the train in which the deceased persons were travelling was having no stoppage at Jharokhas railway station, but for the purpose of crossing that was stationed there, it shows that the story given by the witnessess is highly reliable. The Statement of Sri Ram Narain Singh, S.D.M. was recorded, he stated that on 2.9.2003 the inquest report was prepared, thereafter the statement of Dr. Sahjanand Sharma was recorded who conducted the post mortem, he stated that the post mortem was conducted on 3.9.2003 at 8.00 and 8.30 A.M., the deceased would have been died twenty eight hours prior the post mortem examination. The statement of Anil Dubey, the driver of the bus No. M.P.-5888 which was looted has been recorded, the statement of Krishna Kumar Singh, the Conductor of bus was also recorded by the I.O. and the statement of constable Vijay Kumar was recorded, he clearly stated that the dead bodies could not be identified and no family member of the deceased was present at the place of cremation. His statement corroborates the statement of family members of the deceased. The persons who were falsely implicated in the case of robbery have been acquitted by the trial court. It is a case in which in two innocent persons have been killed by the applicants and other co-accused persons, they were not involved in any criminal case, the gravity of the offence is too much, the applicants and other co-accused persons are responsible for committing the murder of the deceased as well as for lodging the false F.I.R. also. Therefore, they may not be released on bail.

7. Considering the facts, circumstance of the case, submissions made by learned Counsel for the applicants, learned A.G.A., learned Counsel for the complainant and from the perusal of the record,

it appears that gravity of the offence is too much because two innocent persons have been killed by the applicants and co-accused who are police personnel by showing a fake encounter with the deceased, in which one of the deceased was student of Allahabad university and without expressing any opinion on the merits of the case the applicants are not entitle for bail, therefore, the prayer for bail is refused.

8. Accordingly this application is rejected.