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RAMESH AND ANR

v.

STATE OF U.P.

(Criminal Appeal No. 184 of 2005)

AUGUST 25, 2009

B

[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

Penal Code, 1860 – s.302 r/w s.149 – Murder caused by unlawful assembly with common object – Death due to gun-
C *shots from country made pistol – Autopsy report indicated that all 3 injuries on deceased were sufficient in ordinary course of nature to cause death – Prosecution case based on two eye-witnesses PWs 4 and 5 – Conviction of accused-appellants – Challenge to – Contention raised that PW-4 and*
D *PW-5 were interested witnesses and other witnesses not examined by prosecution – Held: PW4 and PW5 were rightly believed by Courts below – Both witnesses gave graphical description of the whole incident – Due to enmity between the parties, no other witness came forward to give testimony,*
E *hence no fault of Investigating Officer – Prosecution proved its case to the hilt – Courts below right in convicting the appellants.*

According to the prosecution, the appellants and four others dragged PW1's brother and pulled him to a spot
F **near the village tube-well and caused his death by firing gun-shots at him from a country made pistol. PW2, who performed the autopsy, confirmed that all three injuries on the deceased were sufficient in the ordinary course of nature to cause death. There was enmity between the**
G **accused party and the complainant party. The Trial Court convicted the appellants under s.302 r.w. ss.149, 147 and 148 of IPC. The conviction was upheld by the High Court.**

The conviction of the appellants was challenged

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before this Court inter alia on grounds that the prosecution case was based on evidence tendered by interested witnesses PW-4 and PW-5 and that two other witnesses who were admittedly present at the place of occurrence were not examined by the prosecution. A

Dismissing the appeals, the Court B

HELD: 1.1. The eye-witnesses PW4 and PW5 are truthful and were rightly believed by the High Court. Both the witnesses have given the graphical description of the whole incident. [Para 7] [569-D-E] C

1.2. Merely because PW-4 was not from the same village, it cannot be said that he had no business in the village. It has come in the evidence clearly that the distance between the village of PW-4 and the village where the incident took place is hardly about 1.5 km. Therefore, his coming to the village for purchasing the seeds cannot be viewed with a suspicion. It is also not necessary that PW-4 should have straightaway gone only to the shop of the seeds and purchased the seeds. After all, PW-4 knew the deceased and in fact, PW-4 was cross-examined in that direction. If PW-4 already knew deceased and if he went just to visit him, this by itself, would not be reason to disbelieve his testimony. In villages, the people do normally go to each other's house. Again the criticism that PW-4 had no business to go and accompany deceased to his field, is also of no consequence, as PW-4 might have walked alongwith deceased hardly for 20-25 paces. In fact, the distance between the house of deceased and his tubewell is hardly about 100-125 paces, which has come in the evidence. Therefore, even if PW-4 walked alongwith deceased, that by itself, does not make his version suspicious in any manner. The cross-examination is lacklustre and nothing has been brought in the same. Ordinarily the deceased would not have gone alongwith H

his enemy just by walking and his being dragged or being pulled would be only a natural thing, which the witnesses supported. [Para 8] [569-G-H; 570-A-G]

1.3. Though the defence severely criticized the prosecution on not collecting any evidence, it can be understood as to why the other witnesses were not examined. The enmity between the two parties was known, there was also murders and counter murders. Under such circumstances, if the witnesses do not become available, it is not the fault of the investigating agency. This is apart from the fact that the Investigating Officer was not asked about the aspect of witnesses being available. This Court does not, therefore, find fault with the judgment of conviction recorded by the Sessions Judge and the High Court. The argument that the evidence fell short of proof beyond the reasonable doubt is not tenable. The prosecution proved its case to the hilt and the Trial Court and the High Court were right in convicting the appellants/accused. [Paras 9, 11 and 12] [571-C-E-H; 572-A-B]

Ram Lakhan Singh & Ors. v. State of Uttar Pradesh **1977 (3) SCC 268, distinguished.**

Case Law Reference:

1977 (3) SCC 268	**distinguished**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 184 of 2005.

From the Judgment & Order dated 14.7.2004 of the High Court of Judicature at Allahabad, in Criminal Appeal No. 163 of 1980.

WITH

Crl. A. No. 364, 548 of 2005.

Jaspal Singh, Imtiaz Ahmed, Naghma Imtiaz, Equity Lex Associates, P.N. Puri, Dhiraj, Reeta Dewan Puri for the Appellants.

Pramod Swarup, Shail Kumar Dwivedi, Manoj Kr. Dwivedi, Vandana Mishra, Ashutosh Kr. Sharma (for Gunnam Venkateswara Rao) for the Respondent.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. This judgment will dispose of Criminal Appeal No. 184 of 2005, Criminal Appeal No. 364 of 2005 and Criminal Appeal No. 548 of 2005. First mentioned Appeal has been filed by Ramesh, original accused No. 2 (A-2) and Ram Nath, original accused No. 5 (A-5), while the second mentioned Appeal has been filed by Mani Ram, original accused No. 3 (A-3). The last mentioned Appeal has been filed by Ram Kumar, original accused No. 1 (A-1). All of them were convicted for the offences under Section 302 read with Section 149, 147 and 148 of the Indian Penal Code (hereinafter referred to as "IPC" for short) by the IIIrd Additional Sessions Judge, Unnao. They were tried alongwith two other accused persons, namely, Swami Nath @ Swami Dayal, original accused No. 4 (A-4) and Ram Naresh, original accused No. 6 (A-6). Even these two accused persons A-4 and A-6 were also convicted alongwith the appellants herein, however, it is reported that Swami Nath @ Swami Dayal (A-4) has not filed any appeal, while Ram Naresh (A-6) is already dead. That leaves us with only the four accused persons.

2. All the six accused persons originally faced a charge under Section 302 IPC. Appellants Ram Kumar (A-1), Mani Ram (A-3) and Swami Dayal @ Swami Nath (A-4) were tried substantively for the offence under Section 302 IPC on the allegation that they had committed murder of one Raj Kumar (deceased) on 24.10.1978 at about 5 p.m. near a well located to the south-east of the house of Pancham in Village Karia Khera, Police Station Kotwali, District Unnao. They were also

A alternatively charged with other accused for the offence under Section 302 read with Section 149 IPC. Some accused persons were also tried under Section 148 IPC and two of them, namely, A-5 and A-6 were tried for the offence under Section 147 IPC.

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3. The deceased Raj Kumar, who was about 24 years old, was the real brother of Prithvi Raj (PW-1), the complainant. They had two other brothers and five sisters. One of the sister is Daya Wati (PW-5), aged about 17 years at the time of the C incident. Ram Kumar (A-1) and Ram Nath (A-5) are the real brothers, while Ramesh (A-2) is the son of their cousin. Excepting Mani Ram (A-3), all the accused persons were from a single family. There was some enmity between the family of the accused and the family of the deceased. There were number of murders. Ram Raj, who was one of the brothers of Prithvi D Raj and Raj Kumar (deceased) was murdered on 12.6.1977. In that murder case, Prithvi Raj (PW-1) had named 7 assailants, out of whom one was Ram Naresh (A-6). In that case, deceased Raj Kumar was a witness. In the murder case of Ram Raj, the prosecution evidence was to begin from 6.11.1978, i.e., about E 12 days after the incident, which took place on 24.10.1978. In short, there is a strong motive of enmity in between the accused party and the complainant party.

4. It so happened that on the fateful day, i.e., 24.10.1978, F Raj Kumar (deceased) went to his tubewell, which is at about 100-125 paces from his house and after watering the field, he came back home at about 4.30 p.m., as there was no electric current available. He again started for his tubewell and his sister Daya Wati (PW-5) and his mother and wife of Prithvi Raj, i.e., G his sister-in-law also followed him. When Prithvi Raj came out of his house, Prahlad (PW-4) met him. Prahlad had come to the village to purchase the seeds. Two other persons also met him there and they also started towards the tubewell. The moment, they reached near the Neem tree situated at a distance of 15 paces from the house of the deceased, all the H

accused accosted him, surrounded him and dragged him by pulling near the well upto a distance of 10-15 paces. Ram Naresh (A-6) then exhorted that Raj Kumar (deceased) should be murdered in the same manner in which his brother Ram Raj was murdered, so that Raj Kumar may not appear as a witness. Thereupon, Mani Ram (A-3) fired a shot from his country made pistol, which was followed by a second shot of fire from the country made pistol of Swami Nath (A-4). Ramesh (A-2) put a cartridge into a country made pistol and gave it to Ram Kumar (A-1), who also fired a shot at Raj Kumar, due to which Raj Kumar died on the spot. All the accused persons then ran away. Because of the injuries, blood started coming out and the clothes of Raj Kumar were soaked. They included, in all, 7 Exhibits. Within about 15 minutes, at about 5.15 p.m., Prithvi Raj (PW-1) came back on his cycle from Village Dewara Kala, where he had gone for doing his duty as Panchayat Sewak. He found the dead body of Raj Kumar. He talked to his wife and mother and his sister Daya Wati (PW-5). Other witnesses, namely, Prahlad (PW-4) and Rajendra Singh and Surendra (both not examined by the prosecution) were also present there. After knowing about the incident from the eye-witnesses, Prithvi Raj (PW-1) himself wrote a First Information Report (FIR) Exhibit Ka-1 and went to Police Station Kotwali, situated at a distance of about 10 km. from the place of the occurrence, where he lodged it at 6.30 p.m. On the basis of this written report, check report Exhibit Ka-3 was prepared and the further investigation started. In the FIR, all the 6 accused persons were named and the whole incident was also narrated. The matter was investigated by D.P. Tiwari, S.I. (PW-6) and after the usual investigation and recording the statements of the witnesses, as also after holding the Inquest Panchanama and Spot Observation Panchanama, the body was sent for post-mortem. After the completion of the investigation, the chargesheet came to be filed. Dr. S.M. Tripathi (PW-2), who had performed the autopsy, found five injuries on the body of Raj Kumar (deceased), three being the entry wounds and two being the

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A exit wounds. He also confirmed that all the three injuries were sufficient, in ordinary course of nature, to cause death.

5. Accused persons abjured guilt. Two eye-witnesses, namely, Prahlad (PW-4) and Daya Wati (PW-5) were examined by the prosecution. Prithvi Raj (PW-1) spoke about the FIR, B while Dr. S.M. Tripathi (PW-2) spoke about the medical aspect. The only other relevant witness is D.P. Tiwari, PW-6, who was the Investigating Officer. The defence did not prevail and all the six accused persons came to be convicted. The accused persons filed appeal before the High Court, however, their C appeals failed and that is how the four accused out of the original six accused persons are before us, challenging their conviction.

6. Before the High Court, the criticism levelled was that the D prosecution stood on the basis of the interested witnesses like Prahlad (PW-4) and Daya Wati (PW-5). The defence severally criticized the non-examination of the other two witnesses, namely, Rajendra Singh and Surendra, who were admittedly present and also the other two ladies, namely, Nanhakki and E Ram Piyari, who were claimed to be present in the FIR. It was further urged before the High Court that the story of the FIR having been recorded at 6.30 p.m. was a myth and in fact, the FIR was ante-dated. All these arguments were repelled by the High Court. The High Court came to the conclusion that the F evidence of Prahlad (PW-4) and Daya Wati (PW-5) were absolutely trustworthy and stood the acid test of cross-examination. The High Court further held that there was enough support in corroborating evidence, inasmuch as in the FIR itself, names of all the accused persons alongwith the part played by each of them was reflected. It was also held by the High Court G that there was no possibility of ante-dating the FIR. The factum of this murder was mentioned in the other FIR, wherein it was complained that the complainants in this case have caused the murder of one of the persons of the accused party and since that FIR was already recorded by 7.45 p.m., there was no H

question of ante-dating the present FIR. The High Court also held that the medical evidence was enough to prove the guilt. On this basis, the conviction came to be confirmed.

7. Before us, Shri Jaspal Singh, Learned Senior Counsel, appearing on behalf of the appellants, who led the arguments and Shri P.N. Puri, Learned Counsel, who supported the arguments of Shri Jaspal Singh, took us through the whole evidence. Ordinarily, we would have refused to go into the evidence, however, in his inevitable style, Shri Jaspal Singh persuaded us to see the evidence of the two eye-witnesses. Seeing the evidence, we are convinced that the eye-witnesses are truthful and were rightly believed by the High Court. Shri Jaspal Singh criticized the evidence of these two witnesses, suggesting that the enmity between the parties should have been held on the backdrop before accepting the evidence of these two witnesses. He is quite right, as the law on the subject is that evidence of the interested witness should be appreciated, keeping that enmity in mind. We find that both the Courts have, in a most balanced manner, appreciated the evidence of these two witnesses. When we see the evidence, it is seen that both the witnesses have given the graphical description of the whole incident.

8. It was tried to be suggested by Shri Jaspal Singh that Prahlad (PW-4) had no business to be in the village and his evidence is almost in the nature of a chance witness. The Learned Senior Counsel wondered that if this witness had come to the village for purchasing the seeds, then he had no business to go to the house of Raj Kumar (deceased) and further to accompany him. It was also suggested by the Learned Senior Counsel that ultimately he had never purchased the seeds, which was the object of his visit to the place. The Learned Senior Counsel further urged that his version on the dragging of Raj Kumar by the accused persons does not really tally with the version given by Daya Wati (PW-5). We have

A considered all these questions. Merely because Prahlad (PW-4) was not from the same village, it cannot be said that he had no business in the village. It has come in the evidence clearly that the distance between the village of Prahlad (PW-4) and the village where the incident took place is hardly about 1.5 km. B Therefore, his coming to the village for purchasing the seeds cannot be viewed with a suspicion. It is also not necessary that Prahlad (PW-4) should have straightaway gone only to the shop of the seeds and purchased the seeds. After all, Prahlad (PW-4) knew the deceased Raj Kumar and in fact, Prahlad (PW-4) C was cross-examined in that direction. If Prahlad (PW-4) already knew deceased Raj Kumar and if he went just to visit him, we do not think, this by itself, would be reason to disbelieve his testimony. In villages, the people do normally go to each other's house. Again the criticism that Prahlad (PW-4) had no business D to go and accompany Raj Kumar to his field, is also of no consequence, as Prahlad (PW-4) might have walked alongwith Raj Kumar hardly for 20-25 paces. In fact, the distance between the house of Raj Kumar and his tubewell is hardly about 100-125 paces, which has come in the evidence. Therefore, even if Prahlad (PW-4) walked alongwith deceased, that by itself, E does not make his version suspicious in any manner. We have seen the cross-examination. The cross-examination is lacklustre and nothing has been brought in the same. The Learned Senior Counsel tried to compare the evidence of Prahlad (PW-4) with evidence of Daya Wati (PW-5) and F pointed out that the theory of dragging was not supported in the evidence of Daya Wati (PW-5). We have seen the original version (in Hindi), which convinces us that even Daya Wati (PW-5) has said that the deceased was actually pulled and pushed to the place, where he was actually fired upon. Even otherwise, G ordinarily the deceased would not have gone alnogwith his enemy just by walking and his being dragged or being pulled would be only a natural thing, which the witnesses supported. There is one mistake on the question of Ramesh (A-2) loading the pistol with cartridges and giving it to the other accused. That

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was obviously a mistake, which has been explained by the Trial Court as in the cross-examination of Daya Wati (PW-5), it has very specifically come that it was Ram Kumar (A-1) who fired. Therefore, the confusion caused was also cleared. Some minor contradictions were pointed out by Shri Jaspal Singh, the Learned Senior Counsel, which in our opinion, have been rightly disbelieved by the Trial Court and the High Court. After all, the contradictions were bound to be there and in fact, those contradictions have gone to support the truthfulness of the witness.

9. Lastly, Shri Jaspal Singh, the Learned Senior Counsel for the appellants pointed out that there were about 12 witnesses. It was admitted by both the eye-witnesses that there were about 10-12 persons, who were watching the incident. Learned Senior Counsel severely criticized the prosecution on not collecting any evidence. Now, it can be understood as to why the other witnesses were not examined. The enmity between the two parties was known, there was also murders and counter murders. Under such circumstances, if the witnesses do not become available, it is not the fault of the investigating agency. This is apart from the fact that the Investigating Officer was not asked about the aspect of witnesses being available. We do not, therefore, find fault with the judgment of conviction recorded by the Sessions Judge and the High Court.

10. Reliance was placed by Shri Jaspal Singh, Learned Senior Counsel on the law laid down by this Court in *Ram Lakhan Singh & Ors. vs. State of Uttar Pradesh* reported in 1977 (3) SCC 268, more particularly, on Para 24-31. We do not think that the case is relevant, as we are convinced that on the facts of this case, the defence has no scope to stand.

11. Shri Puri, Learned Counsel for the appellants also supported the argument and tried to contend before us that the evidence fell short of proof beyond the reasonable doubt. We

A do not think so.

12. For the reasons given, we are of the firm opinion that the prosecution proved its case to the hilt and the Trial Court and the High Court were right in convicting the appellants/ B accused. In that view, all the appeals are dismissed.

B.B.B. Appeals dismissed.