

Ram Dev and Another

Vs

State of U. P.

Criminal Appeal No. 247 of 1989

(Dr. A. S. Anand, B. L. Hansaria JJ)

23.02.1994

ORDER

1. Ram Chandra was subjected to violent death at about 10 or 10.30 p. m. on 12-6-1977 in the courtyard of his own house at Village Gudera. His brother Ram Saran PW 1 received two injuries in the same incident. Both the appellants along with Ram Mohan and Rabudi alias Pratap Narain were challaned in that connection by the police, after investigation which started after lodging of the FIR on 13-6-1977 at 6.30 a. m. at police outpost Amritpur, at a distance of about 8 miles from the place of occurrence on the statement of Ram Saran, PW 1, the injured witness. They were put on trial. The learned Sessions Judge, vide judgment dated 6-9-1978 acquitted Ram Mohan and Rabudi but convicted both the appellants. Ram Dev was convicted for an offence under Section 302 IPC for the murder of Ram Chandra and also for an offence under Section 307 read with Section 34 IPC in respect of the injuries caused to Ram Saran, PW 1. Sudhakar was convicted for an offence under Section 302 read with Section 34 IPC in respect of the murder of Ram Chandra and under Section 307 IPC for the injuries caused to Ram Saran PW 1. Both the appellants were sentenced to suffer life imprisonment and rigorous imprisonment for five years each on each of the two counts respectively. The State did not file any appeal against the acquittal of Ram Mohan and Rabudi in the High Court but the appellants challenged their convictions and sentence. The High Court, vide judgment dated 7-11-1988 dismissed the appeal filed by the appellants and confirmed their conviction and sentence.

2. The prosecution story in short is that Ram Saran, PW 1 along with his three brothers Ram Chandra, deceased, Ram Bharose, PW 2 and Raksh Pal used to live in different kothas of the same house with a common courtyard. On the fateful day, the appellants who have their houses not very far away came to the courtyard of the house of Ram Saran, PW 1 and his brothers. While the deceased Ram Chandra, according to the prosecution case, was sitting on a Rajai, his other brothers Ram Saran, Ram Bharose and Raksh Pal were sitting on a cot towards the east side of the kitchen inside the courtyard. There was a lighted lantern hanging on the wall. Both the appellants were armed with a gun each while according to the prosecution case the acquitted co-accused were armed with country-made pistols. Soon after arrival in the courtyard Ram Dev appellant 1 shouted that Ram Chandra should be put to death and should not be allowed to escape. He thereafter fired from his gun at Ram Chandra causing him injuries as a result of which he died on the spot. The three brothers took shelter by running away and hiding behind the wall of the kitchen and raised an alarm. Sudhakar appellant is then reported to have fired from his gun towards them and Ram Saran PW 1 was hit by the pellets from the fire shot by Sudhakar. On hearing cries of Ram Chandra and others some persons from the locality including Brij Bhushan PW 5 arrived at the spot flashing their torches. They challenged the accused party, who however made good their escape. Early in the next morning Ram Saran PW 1 went to the police outpost Amritpur and lodged the first information

report. The investigating officer, Shri Bharat Lal Sharma, Sub-Inspector arrived at the spot and after preparing the site plan, inquest report and effecting seizure of the pellets and tiklis from the spot, sent the dead body of Ram Chandra for post-mortem examination and also sent Ram Saran PW 1 for medical examination. Dr R. C. Gupta, PW 3 examined the injuries of Ram Saran, PW 1 while Dr P. K. Bansal, PW 6 performed the post-mortem examination on the dead body of Ram Chandra, deceased. The medical evidence has been reproduced by both the High Court and the Sessions Court and we need not record the injuries found on the deceased or on Ram Saran, PW 1 in this judgment. Previous enmity is stated to be the motive for the assault.

3. Learned counsel for the appellants in this appeal, by special leave, firstly argued that there was difference between the oral testimony as given by PW 1 Ram Saran and PW 2 Ram Bharose and the medical evidence and therefore, the entire prosecution case suffers from a serious infirmity and the convictions of the appellants could not be sustained. Similar arguments, it appears, were raised before the learned Sessions Judge as well as the High Court also. The High Court for very cogent reasons found that there was no conflict between the medical evidence and the oral testimony. High Court negated the argument that all the injuries which were found during the post-mortem examination on deceased Ram Chandra could not have been caused by one shot fired by Ram Dev appellant from his gun. The High Court dealt with the medical evidence regarding these injuries and opined that all the injuries mentioned by the doctor could have been caused by the dispersed pellets of a single fire. In the words of the High Court :

"It is not improbable or impossible that all these injuries mentioned by the doctor under three different heads in the post-mortem examination report could have been caused by the dispersed pellets of the same single firing. In our opinion, they were so caused. Therefore, there is nothing on the record to show that the medical evidence in this case is against the oral testimony. On the contrary it supports the oral version and to that extent it lends support to the witnesses."

4. We are in agreement with the above view of the High Court. That apart, since our analysis of the evidence of PW 1, Ram Saran and PW 2, Ram Bharose has created an impression on our minds that both these witnesses are truthful, reliable and trustworthy, as has also been found by the trial court and the High Court, the argument that the statement of Dr R. C. Gupta, PW 3 with regard to the injuries of PW 1 Ram Saran has belied the oral testimony does not appeal to us. The medical witness did not rule out the possibility of injuries having been caused to Ram Saran, PW 1 from the grazing of pellets from the gunshot. It is well settled that medical evidence is only opinion evidence. It is hardly decisive and is often inconclusive. Since the oral testimony of PW 1 Ram Saran and PW 2 Ram Bharose suffer from no infirmity whatsoever, the vague opinion given by Dr Gupta cannot in any way affect the value of oral testimony and cannot affect the credibility of the prosecution case at all.

5. That the occurrence took place in the courtyard of the deceased and his brother Ram Saran and others is amply established from the fact that the pellets and tiklis were found from that courtyard and there were also pellet marks on the walls. The dead body of Ram Chandra was also lying in the same courtyard. This is evident from the site plan Ex. Ka-15. Since the appellants were known to the complainant party, the question of any doubt in identification does not arise, particularly when the lantern light was available in the courtyard and we therefore, do not find any merit in the next argument of the learned counsel, that the occurrence took place at a different place and the assailants could not be identified either. We also do not find any merit in the last argument of the learned counsel that the delay in lodging the FIR has rendered the prosecution case doubtful. Ram Saran,

PW 1 has given a cogent explanation for lodging the FIR in the morning and both the courts below have rightly accepted the same.

6. After considering the judgment of the trial court and the High Court, we find ourselves in complete agreement with both the courts that the prosecution has established the case against both the appellants, Ram Dev and Sudhakar, beyond a reasonable doubt. Their conviction for the murder of Ram Chandra and for causing injuries to Ram Saran, PW 1 is well merited and the sentence imposed upon them on each count also does not call for any interference. There is no merit in their appeal.

7. Before parting with the judgment, we would however like to observe that the prosecution did not examine Bharat Lal Sharma, Sub-Inspector, who was the investigating officer of the case. It was desirable for the prosecution to produce the investigating officer at the trial notwithstanding the fact that the various documents which were to be proved by the investigating officer were accepted by the defence as genuine documents and were not disputed. However, the non-examination of the investigating officer does not in any way create any dent in the prosecution case much less affect the credibility of the otherwise trustworthiness of the oral testimony of the eyewitnesses which we have accepted.

8. As a result of the above discussion the appeal fails and is hereby dismissed.

</html