

SUPREME COURT OF INDIA

State of U.P

Vs.

Om Prakash

[2015] INSC 34

(Sudhansu Jyoti Mukhopadhaya, N.V. Ramana, JJ.)

13.01.2015

JUDGEMENT

N.V.Ramana, J.

1. These appeals arise out of a common impugned judgment dated 23 September, 2005 of the Division Bench of High Court of Judicature at Allahabad in various criminal appeals arising from the judgment and order dated 23 January, 2004 passed by the Additional District & Sessions Judge (Special Judge, SC/ST Act), District Pilibhit, Uttar Pradesh.

2. AN FIR was lodged by the Complainant Lalta Prasad at the PS Bukhera, District Pilibhit, U.P. on 10th March, 2001 alleging that while he along with Hem Raj, Moti Ram Kundan, Shiv Charan Lal S/O. Hari Shankar and his father Devi Ram were sitting at his crusher and celebrating the festival of Holi along with relatives and friends, the accused No. 7 Ram Swaroop S/O. Hori Lal appeared there with the company of other accused carrying different types of arms and attacked them. The motive behind their attack was that about ten months prior to the incident, Imarati Devi, wife of accused No. 7 (Ram Swaroop) had contested and lost the election for the post of Gram Pradhan and Ram Swaroop (accused No. 7) had threatened the villagers to bear the brunt for not getting his wife elected to the post. He, therefore, wanted to take revenge on the villagers. Other accused who accompanied Ram Swaroop were Jagan Lal (accused No. 2) armed with a gun, Ram Bharosey (accused No. 32) carrying Pauniya, Ashok Kumar (accused No. 31), Kunwar Sen (accused No. 26), Lala Ram (accused No. 22) and Ram Swaroop s/o. Dal Chand (accused No. 2) all armed with Country made pistols. Pati Ram (accused No. 12), Hori Lal (accused No. 28), Om Prakash (accused No. 1), Ram Chandra (accused No. 11), Bhagwan Swaroop (accused No. 13), Lalta Prasad (accused No. 8), Bhagirathi (accused No. 3), Budhsen (accused No. 9), Baljeet (accused No. 10) and Nanhey Lal (accused No. 14) were armed with banka. Other accomplices were Dal Chand (accused No. 29) armed with Suja, Shree Krishna (accused No. 18), Mahesh (accused No. 17), Dharamveer (juvenile), Lalman (accused No. 15), Chetram (accused No. 24), Kalicharan (accused No. 23), Gaya Deen (juvenile, died during trial), Nanhoo Lal (accused No. 21), Kanhai Lal (accused No. 27), Nokhey Lal S/O. Ram Dayal (accused No. 19) and

Om Prakash (accused No. 16) who were carrying lathis in their hands. According to the complainant, Ram Swarup (accused No. 7) exhorted other accused to kill the complainant party. Out of fear, the complainant with his family and friends ran helter skelter to save their lives. The accused party chased them assaulted them indiscriminately and opened fire. When some of the members of the complainant party entered into a kothari (a small room in the field) to save themselves from the ruthless firing of accused party, the women accused Maya Devi (accused No. 4), Amriti Devi (accused No. 5) and Sunita Devi (accused No. 6) carrying kerosene oil with them, poured the same on the khaprail of the Kothari and Ram Swaroop (accused No. 7) set it ablaze from the front side and Uma Shankar (accused No. 34) set the fire from back side. Moti Ram, a victim, tried to jump from the roof of the Kothari but he was shot by Ram Swaroop (accused No. 7) resultantly he fell in the fire. Similarly, other victims Hem Raj, Chunni Lal and Mahendra Pal tried to come out of the Kothari, but they too were shot. When the accused left the place, the complainant found Mahendra Pal lying dead in a drain, Moti Ram was lying in the Kothari in a burnt condition. The dead bodies of Hem Raj and Chunni Lal were found in the fields.

3. Having registered the case, SHO P.K. Sharma (PW 14) rushed to the place of occurrence, recorded statements and prepared site plan. The police then recovered 3 empty cartridges, prepared recovery memo (Ext. Ka. 109), prepared inquest reports of the deceased, collected blood stained and plain earth and sent the bodies for postmortem. He then arrested the accused Dharamveer (juvenile), Maya Devi and Mahesh. Seven other accused Jagan Lal, Narain, Ram Bharose, Budhsen, Bhagirath, Baljeet and Nanhey Lal were also arrested immediately and weapons were recovered from their possession. On 17th March, 2001 police arrested seven more accused persons, namely, Lalman, Kali Charan, Gaya Deen, Nanhoo Lal, Kanhai Lal, Nokhey Lal and Rambhadur and lathis and ballams were recovered from them. On the next day, ten more accused including accused No. 7 (Ram Swaroop) were arrested and a 12 bore No. 4236 (gun) with three live cartridges were recovered from his possession. One 12 bore country made Pauniya and one live cartridge were recovered from Uma Shankar. A country made pistol and one live cartridge were recovered from the possession of Ashok Kumar. From the possession of Pati Ram, Ram Chandra, Bhagwat Swaroop and Lalta Prasad bankas were recovered. Lathis were recovered from Chet Ram, Om Prakash S/O. Hira Lal. While accused Lala Ram was arrested on 20th March, 2001, Ram Swaroop S/O. Dal Chand, Kunwar Sen, Shree Krishna and Om Prakash S/O. Mansha Ram surrendered in Court. Some more weapons were recovered at the instance of Ram Swaroop S/O. Dalchand, Kunwar Sen and Shree Krishna. Charge -sheet (Ext. Ka. 120) was submitted after investigation and the case was committed to the Court