

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1508 OF 2005

ASHOK RAI

...APPELLANT

Versus

STATE OF U.P. & ORS.

...RESPONDENTS

JUDGMENT**(SMT.) RANJANA PRAKASH DESAI, J.**

1. There were eight accused. They were Bashisht Rai-A1, Jai Prakash Rai-A2, Ashok Rai-A3, Awadh Narain Rai-A4, Hirdaya Narain-A5, Umesh Chandra Rai-A6, Loknath-A7 and Ramnath Rai-A8. All of them were tried in Sessions Trial No. 215 of 1979. Bashisht Rai-A1 was tried for the offences under Sections 148, 302 and 449 of the IPC. Ashok Rai-A3 and Umesh Chandra Rai-A6 were charged under Sections 148, 449 and 302 read with Sections 34 & 149 of the IPC. They were alternatively charged under Section 302 read with Section 34 of the IPC. Rest of the accused were charged under Sections 147 and 302 read with

Section 149 of the IPC.

2. According to the prosecution deceased Kailash Rai, the material witnesses and the appellant belong to one family being descendants of a common ancestor. They lived in a joint family. Umesh Chandra Rai-A6 was the son of Babu Lal brother of Ram Dutt (father of deceased Kailash Rai & PW1- Kamla Rai, the informant). Deceased Kailash Rai and other members of his family lived jointly with Babu Lal. Umesh Chandra Rai-A6 separated from the joint family 7 to 8 months before the occurrence because of oral partition. He wanted his share from the land in Tandwa village. His father Babu Lal was not agreeable to this. There was altercation between deceased Kailash Rai and Umesh Chandra Rai-A6 on this issue. Umesh Chandra Rai-A6 developed friendship with Loknath-A7 who had a personal enmity with PW1- Kamla Rai. There were civil litigations pending between Loknath -A7 and PW1- Kamla Rai.

3. The incident in question took place in the night intervening 26th & 27th of June, 1979 between 1.00 a.m and 2.00

a.m. PW1-Kamla Rai, Shriram Rai, Gorakh Rai, Munna Lal and children were sleeping in the Sehan in the north of the Baithaka. The ladies were sleeping inside the Zanana house. Deceased Kailash Rai and his wife PW4-Bijula Devi were sleeping on a cot inside the Ahata. Between 1.00 a.m. and 2.00 a.m. Ashok Rai-A3, Umesh Chandra Rai-A6 and Bashisht Rai-A1 came in the Ahata by climbing over the roof through the window. They came inside. Bashisht Rai-A1 was armed with a dao. Umesh Chandra Rai-A6 had a gandasa. Ashok Rai-A3 was armed with a sword. Ashok Rai-A3 closed the mouth of PW4-Bijula Devi. She woke-up. She saw Umesh Chandra Rai-A6 pressing the head of her husband and Bashisht Rai-A1 cutting his throat. Deceased Kailash Rai started moving his body restlessly. He received two injuries on his chest. Thereafter, all the three accused started running away. PW4-Bijula Devi raised cries and flashed the torch. The accused reached the gate and looked at her. She continued to cry. The accused went out through the door which opened towards the verandah of the Baithaka. PW1- Kamla Rai, Shriram Rai and others who were sleeping outside in the Sehan woke-up due to the cries of PW4-Bijula Devi. PW1-Kamla Rai

and Shriram had torches with them. They flashed the torches towards the door through which Umesh Chandra Rai-A6, Bashisht Rai-A1 and Ashok Rai-A3 were coming out. They saw Bashisht Rai-A1 with a dao, Ashok Rai-A3 with a sword and Umesh Chandra Rai-A6 with a gandas. They were challenged by PW1-Kamla Rai and others, but they continued running towards the South. PW1-Kamla Rai came in the Ahata and found Kailash Rai lying dead near his cot with a throat injury. PW4-Bijula Devi was crying. Her clothes were blood stained. She narrated the incident to him. He dictated his report to Ram Babu. He took it to P.S. Mohamadabad. It was lodged at 2.45 a.m. Entry was made in General Diary. Investigation was started. The accused were arrested. Post-mortem of deceased Kailash Rai revealed following external injuries.

“1. One incised wound on right side of neck in the middle measuring 15 cm x 4 cm, horizontally placed extending from anterior aspect of neck up to posterior aspect of right side with retracted skin in the middle, clear cut margins, inverted all major vessels and muscles, trachea, oesophagus cut upto bone, sprouting of blood present.

2. One incised wound on left side of chest

horizontally placed measuring 7cm x 2 cm spindle shaped, 9 cm above the left nipple, clean cut margins muscle deep.

3. Incised wound measuring 2 cm x 5 cm on left chest wall horizontally placed 2 cm medial to injury no. 2, clean cut margins muscle deep.”

On internal examination, inter alia, larynx and trachea were found cut. The doctor opined that ante-mortem injuries caused by sharp weapons produced haemorrhage and shock resulting in death.

4. After completion of the investigation the accused came to be charged as aforesaid. The important witnesses examined by the prosecution are PW1- Kamla Rai, PW2-Kedar Rai and PW4-Bijula Devi the wife of the deceased. The accused denied the charge and contended that they were falsely implicated. Ashok Rai-A3 stated that at the time of occurrence he was at Allahabad preparing his thesis for M.Sc. (Agr). He claimed that he was working as Assistant Soil Conservative Inspector.

5. The trial court convicted Umesh Chandra Rai-A6 under Section 302 read with Sections 34 and 449 of the IPC and

sentenced him to undergo imprisonment for life on both the counts. The remaining seven accused were acquitted. Umesh Chandra Rai-A6 carried an appeal against his conviction to the High Court. During the pendency of the appeal he died and therefore his appeal abated. The State carried an appeal against the acquittal of the other accused to the High Court. The High Court held Bashisht Rai-A1 and Ashok Rai-A3 guilty and convicted them for the offences punishable under Sections 302 and 449 of the IPC and under Section 302 read with Section 34 and Section 449 of the IPC respectively. Each of them was sentenced to life imprisonment for each of the offences. The acquittal of the other accused was upheld. The instant appeal is preferred by Ashok Rai-A3 (hereinafter referred to as '**the appellant**').

6. Mr. Santosh Mishra, learned counsel for the appellant submitted that the High Court has wrongly convicted the appellant. He submitted that the conviction cannot be based only on the evidence of PW-4. Since the prosecution has alleged that there is strong motive, corroboration to PW-4's evidence

was a must. In this connection he relied on **Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P.**¹. He submitted that there is no corroboration to PW4's version. Counsel submitted that admittedly the incident occurred in the dead of night. There were no lights. PW4 is a pardanashin lady. Out of the three accused who entered the room, as per prosecution, one was Umesh Chandra Rai-A6 who was PW4's brother-in-law. She could have perhaps identified him. But the appellant and the other accused might not have been even seen by her. She could not have identified them. PW1-Kamla Rai must have asked her to include their names as the assailants. Counsel submitted that though several ladies were present at the scene of offence none of them is examined. Moreover, Ram Babu the person who wrote the FIR dictated to him by PW1-Kamla Rai is not examined. Counsel submitted that deceased Kailash Rai was involved in two other cases of dacoity. It is Umesh Chandra Rai-A6 who had enmity with deceased Kailash Rai. The appellant had no enmity with him. There was no reason for him to kill deceased Kailash Rai. Counsel submitted that PW1-Kamla

1 2006(11) SCC 444

Rai was sleeping outside. He was an easy prey. There is no reason why the appellant would go inside and kill the deceased. Counsel further submitted that the prosecution witnesses are interested witnesses. Their evidence must be closely scrutinized. In this case there is also enmity between the two sides. Therefore, false involvement cannot be ruled out. In this connection he relied on **Raju @ Balachandran & Ors. v. State of Tamil Nadu**². Counsel submitted that the appellate court can interfere with the order of acquittal only if there are compelling and substantial reasons for doing so. If the impugned judgment of acquittal is clearly unreasonable or perverse, the appeal court can interfere with it. If the view taken by the trial court is a reasonably possible view it should not be interfered with. In support of this submission counsel relied on a number of judgments, one of them being **Bihari Nath Goswami v. Shiv Kumar Singh & Ors.**³. It is not necessary to refer to all the judgments cited by learned counsel as all those judgments reiterate the same principles. Counsel submitted that the impugned judgment, so far as it convicts the

2 2012(12) SCC 701

3 2004 (9) SCC 186

appellant may, therefore, be set aside.

7. Mr. Shrish Kumar Misra, learned counsel appearing for the State of U.P filed written submissions. He submitted that the trial court has erroneously ignored the most vital evidence. The trial court has wrongly termed PW2-Kedar Rai as a partisan witness. Counsel submitted that, in any case, evidence of partisan witnesses also can be relied upon if it is found to be cogent. In this case evidence of PW1, PW2 and PW4 inspires confidence and ought to have been relied upon. PW4 being the wife of the deceased is the most natural witness. She had an opportunity to see the appellant. The trial court wrongly held that being a pardanashin lady she might not have seen the appellant and hence her alleged identification cannot be relied upon. The face of a pardanashin lady cannot be seen by others, but she can see everybody. The view taken by the trial court that a person who has a bright future would not commit murder is unsustainable. The suggestion that the appellant was not in the village at the relevant time has rightly been rejected by the High Court as no defence witness was examined to support it.

The trial court also erred in relying on an entry in the case diary of the investigating officer to the effect that it was generally felt that the appellant and others except Umesh Chandra Rai-A6 are falsely involved in this case. In this connection he relied on **Mohd Ankoos & Ors. v. Public Prosecutor High Court of A.P., Hyderabad**⁴ and **Shamshul Kanwar v. State of U.P.**⁵. Counsel submitted that in this case the only possible view that can be taken is that the appellant is guilty. The High Court, therefore, rightly overturned the acquittal order. In this connection he relied on **K. Gopal Reddy v. State of Andhra Pradesh**⁶ and **G.C. Kanungo v. State of Orissa**⁷. Counsel submitted that the appeal be therefore, dismissed.

8. Several Judgments of this court have been cited on the principles which should guide the court while dealing with an appeal against order of acquittal. The law is so well settled that it is not necessary to refer to those judgments. Suffice it to say that the appellate court has to be very cautious while reversing an order of acquittal because order of acquittal strengthens the

4 2010(1) SCC94

5 1995(4) SCC 430

6 1979(1) SCC 355

7 1995(5) SCC 96

presumption of innocence of the accused. If the view taken by the trial court is a reasonably possible view it should not be disturbed, because the appellate court feels that some other view is also possible. A perverse order of acquittal replete with gross errors of facts and law will have to be set aside to prevent miscarriage of justice, because just as the court has to give due weight to the presumption of innocence and see that innocent person is not sentenced, it is equally the duty of the court to see that the guilty do not escape punishment. Unless the appellate court finds the order of acquittal to be clearly unreasonable and is convinced that there are substantial and compelling reasons to interfere with it, it should not interfere with it. We will consider this case in light of these principles.

9. The trial court has erroneously recorded that the accused had no motive to kill deceased Kailash Rai. The High Court has rightly observed that Umesh Chandra Rai-A6 was the first cousin of deceased Kailash Rai. The appellant and A1-Bashisht Rai belonged to the same family of Loknath, Ramnath Rai and Deonath Rai and there was civil as well as criminal

litigation pending between their family and the family of deceased Kailash Rai. Umesh Chandra Rai-A6 was unhappy about the family partition. He had a grouse against his first cousin PW1-Kamla Rai over the partition dispute. PW1-Kamla Rai is the brother of deceased Kailash Rai. Umesh Chandra Rai-A6 had developed intimacy with other accused who were as it is not on good terms with PW1-Kamla Rai's family. Thus, it is not possible to say that motive is absent in this case. Consequently, the argument that the appellant had no enmity with deceased Kailash Rai; that PW1-Kamla Rai was sleeping outside the room and, therefore, the appellant could have easily killed PW1-Kamla Rai instead of taking the risk of going inside and killing deceased Kailash Rai must also be rejected. The relations between the two sides were undoubtedly strained. In such a situation, it is difficult to fathom the undercurrents. As to why the accused chose deceased Kailash Rai and not PW1-Kamla Rai is difficult to say. But the fact remains that there was enmity between the two sides and there is reliable evidence on record to establish that the appellant was involved in the murder of deceased Kailash Rai. In any case, the prosecution

has examined PW4-Bijula Devi, who is an eye-witness. When there is eye-witness account on record, the absence of motive pales into insignificance. It was submitted that if it is held that there is strong motive, then, there must be corroboration to PW4's evidence to rule out false implication. In this case evidence of PW-1 & PW-2 and other attendant circumstances provide corroboration to PW4's evidence.

10. It is argued that the prosecution case rests on evidence of interested witnesses. No independent witnesses are examined. Unless there is corroboration to the evidence of interested witnesses, their evidence cannot be accepted. We cannot accept this submission. Evidence of interested witnesses is not infirm. It would be good to have corroboration to their evidence as a matter of prudence. But corroboration is not always a must. If the evidence of interested witnesses is intrinsically good, it can be accepted without corroboration. However, as held by this Court in **Raju@Balachandran**, the evidence of interested witnesses must be scrutinized carefully. So scrutinized, the evidence of PW1, PW2 and PW4 appears to

be acceptable.

11. The most important witness is PW4-Bijula Devi, the wife of deceased Kailash Rai. She was sleeping in the Ahata in the courtyard, on the same cot along with her husband deceased Kailash Rai in the night in question. She is the most natural witness. Her clothes were found blood stained. According to the serologist's report the blood group of the blood found on her clothes matched the blood group of the blood found on her husband's clothes. Her presence in the house at the dead of night cannot be doubted.

12. Evidence of PW4-Bijula Devi is forthright and convincing. According to her, she woke-up when the appellant pressed her mouth. She saw Umesh Chandra Rai-A6 pressing his husband's head hard. She saw Bashisht Rai-A1 cut her husband's neck with a dao. She stated that Umesh Chandra Rai-A6 had a gadasa in his hand and the appellant had a sword in his hand. She further stated that when her husband tried to move he received two more injuries on his chest. We have reproduced the injuries sustained by the deceased. They are consistent

with this evidence. PW4 further stated that after assaulting deceased Kailash Rai, the accused ran away. She started shouting. She lit her torch before the accused could reach the door. They turned at her; looked at her and ran away. Hearing her cries, PW1-Kamla Rai and others came there. She narrated the incident to them. Thus, PW4 had ample opportunity to see the accused. They were in close proximity with her and she had seen them in torch light. It would be difficult for her to forget the faces of her husband's assailants. It is stated that PW4 is a pardanashin lady. The trial court has observed that being a pardanashin lady she would not know the accused. It is argued that she may identify Umesh Chandra Rai-A6, he being her brother-in-law, but she could not have identified others. This submission does not impress us. As rightly contended by the State counsel, the face of a pardanashin lady cannot be seen by general public, but she can see them. The accused and PW1-Kamla Rai's family reside in the same village. Their houses are situated in the same area and in close vicinity. Besides, there are disputes between the two sides. As rightly observed by the High Court, the appellant belonged to the clan of PW4's in-laws.

It is not possible, therefore, to hold that PW4 would not know the appellant and could not have seen him before, merely because she stated that she did not know some persons from the village.

13. We are also not prepared to accept the submission that PW4 gave the name of the appellant because PW1 asked her to do so. There was no need for anyone to prompt her, because she had seen the incident from close quarters. From the tenor of her evidence she appears to be a very truthful witness. When she was asked whether her husband was assaulted on the neck by a gandasa, she firmly stated, no not by a gandasa, but by a dao. There is no reason to disbelieve her so far as complicity of the appellant is concerned.

14. PW1-Kamla Rai provides corroboration to the evidence of PW4. He has given a general outline of the strained relationship between the two sides. He has then stated that at about 2.00 a.m when PW4 raised cries he got up from his sleep. He and Ram Rai lit their torch and flashed it towards the door of the meeting room which is a path for exit and which leads to Ahata.

In the torch light they saw the appellant, Bashisht Rai-A1 and Umesh Chandra Rai -A6 coming out of the door. The appellant had a sword in his hand. Bashisht Rai-A1 had a weapon in his hand. Umesh Chandra Rai-A6 had a gadasa in his hand. They challenged the accused. But the accused ran away. They went to the Ahata. They found Kailash Rai lying dead. PW4 who was crying narrated the incident to him. He then dictated the report to Ram Babu. Ram Babu read out the report to him. Thereafter, he put his signature on the same. Then he went to Police Station, Mohammadabad and lodged it. He stated that the police station is about 3 furlong away from his house. He has been cross-examined but he has stood firm in the cross-examination. This witness is also a natural witness. Admittedly, the deceased and this witness used to stay together. He was, therefore, expected to be present in the house. He has truthfully stated the events. His claim that he saw the appellant and the other accused running with weapons cannot be doubted. He has truthfully stated that he dictated the FIR to Ram Babu. It is true that Ram Babu is not examined. But that does not affect the veracity of the evidence of this witness.

Pertinently, he has stated that Ram Babu read out the report and then he signed it. Thus, he verified whether what he stated was correctly recorded or not. Besides, the FIR is promptly recorded at 2.45 a.m. This witness has rightly been believed by the High Court.

15. PW2-Kedar Rai is a neighbour of Kamla Rai. He stated that on the day of incident he was sleeping at the gate of his house. At about 2.00 a.m. he woke-up from his sleep upon hearing the screams of PW1-Kamla Rai. He stated that he ran towards Kamla Rai's house. When he went 2 to 3 steps from the north-west corner of his house he saw people running. He identified them in the light of torch. Bashist Rai-A1 and Umesh Chandra Rai-A6 had weapons in their hands. The appellant had a sword in his hand. From west-side Ram Babu and Chandrima Rai came with torches. The accused ran towards the South. They ran after the accused for a while and stopped. They went in the house of PW1-Kamla Rai. They found Kailash Rai lying dead. According to PW2, PW4-Bijula Devi told them that the appellant and the other two accused had come to their

courtyard and attacked deceased Kailash Rai. This witness has not seen the actual incident, but he corroborates PW4 and PW1 to the extent that the appellant and the other two accused had weapons in their hands and they were seen running away from the house of PW1-Kamla Rai. He has categorically denied the suggestion that he was giving false evidence due to enmity. His house is near the house of deceased Kailash Rai. His presence at the scene of offence is natural. The trial court unnecessarily discarded his evidence holding that he is an interested witness.

16. It is contended that the appellant was busy with his thesis for M.Sc.(Agr.) and was most of the time not in the village, and on the night in question he was not present in the village. There is no substance in this submission. As rightly observed by the High Court, the incident took place in the month of June when most of the educational institutions remain closed for summer, hence, the appellant may be present in the village. Pertinently, the appellant has not produced any evidence to show that he was staying in a hostel. There is no evidence to show what was the distance between the village

and the educational institution in which the appellant was studying. Thus, the plea of *alibi* is not proved.

17. It was wrong for the trial court to suggest that Bashisht Rai-A1 would not indulge in such activities because he had a bright career and future and indirectly apply that yardstick to the appellant. Career or a position of a man in life is irrelevant. Crimes are also committed by men holding high positions and having bright future. Trial court grossly erred in relying on such extraneous circumstance and rightly the High Court dismissed this circumstance as irrelevant.

18. Perversity of the trial court's judgment becomes apparent when one finds the undue importance given by it to the diary entries made by the investigating officer PW7-Sheomurthy Singh. PW7 stated that it was mentioned by him in the case diary that it was the opinion of general public that involvement of the accused except Umesh Chandra Rai-A6 is false. The trial court made a perverse observation that the investigating officer never tried to find out whether this rumour is true and submitted charge-sheet. Such reliance on diary

entries is not permissible (**Mohd Ankoos** and **Shamshul Kanwar**). Besides, the general feeling of the society has no relevance to a criminal case. A court deciding a criminal case must go by the legal evidence adduced before it. The trial court's order thus suffered from a gross error of law warranting the High Court's interference.

19. It was argued that ladies of the house who were admittedly present have not been examined. We do not think that this has had any adverse impact on the prosecution case. The ladies were sleeping in a separate room. When male members of the family were available to give evidence it is unlikely that female members would step in witness box.

20. In the ultimate analysis, we are of the opinion that the High Court rightly overturned the trial court's order so far as it acquitted the appellant. The trial court's view is totally perverse and unreasonable. Undoubtedly, there were compelling and substantial reasons for the High Court to interfere with it. We, therefore, confirm the impugned order. Appeal is dismissed. The appellant is on bail. He is directed to

surrender forthwith. His bail bond stands cancelled.

21. We are informed that the appellant is a senior citizen. He is suffering from 'Endstage Renal Disease'. It appears that he is required to undergo dialysis twice a week. This information is supplied to this Court by D.I.G., Allahabad range. The appellant's health condition is, therefore, precarious. While we sympathise with the appellant on this aspect, law must be allowed to take its own course. The appellant, however, will be at liberty to approach the State Government for commutation of his sentence or the Jail Superintendent for premature release under the provisions of the U.P. Jail Manual, a deemed appropriate.

JUDGMENT

.....J.
(RANJANA PRAKASH DESAI)

.....J.
(MADAN B. LOKUR)

NEW DELHI;
APRIL 15, 2014.