

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 904 OF 2006

RAM ADHAR & ANR.

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

(With appln(s) for bail and office report)

Date: 16/02/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s)

Mr. Vivek Vidyarthi, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent(s)

Mr. Ratnakar Dass, Sr. Adv.
Mr. S.K. Dwivedi, Adv.
Ms. Vandana Mishra, Adv.
Mr. G.V. Rao, Adv.
Mr. Manoj Kr. Dwivedi, Adv.
Mr. Irshad Ahmad, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 904 OF 2006

RAM ADHAR & ANR.

.. APPELLANT(S)

vs.

STATE OF U.P.

.. RESPONDENT(S)

O R D E R

This appeal by way of special leave arises out of
the following facts:

PW.1 Saroj Shukla along with her husband Roop Narain

Shukla since deceased were celebrating Diwali on the 10th November, 1977 at their residence in Mohalla Jawahar Nagar, Unnao, at about 8.30 p.m. when her brother Ram Adhar along with his associate Kishan the appellants herein, came to the house armed with a country-made pistol and a knife respectively. Ram Adhar thereafter fired a shot at Roop Narian hitting him on the elbow and despite Saroj's pleadings to spare her husband Kishan too caused injuries with his knife on his person killing him at the spot. In the scuffle that followed, the deceased and the appellants came out to the chabutra at which place Ram Adhar fired a second shot at the deceased which missed the intended target but hit co-appellant Kishan on the inner portion of the leg. The incident was witnessed by two neighbours, Ram

-2-

Kishore - PW-2 and Shyam Sunder - PW-5 as well. Saroj Shukla thereafter rushed to the police station and lodged the report at about 9.00 p.m. which was recorded by Sub-Inspector Parvez Hussain. The Sub-Inspector also reached the place of incident at about 10.00 p.m. entered the inquest proceedings and on the next morning sent the dead body for the post-mortem examination. At about 11.40 p.m. on the same evening, the Sub-Inspector received information that Kishan was admitted in the District hospital in an injured condition. The Sub-Inspector then went to the hospital and arrested Kishan and recorded his statement. During the course of the investigation the police officer also recorded the statements of Ram Kishan Sonar and Shyam Sunder Gupta, PW. 2 and 5 respectively. On the completion of the investigation a charge-sheet was submitted against the appellants on 7th April, 1978. The appellant Kishan was charged for the offence under Sec.302 of the I.P.C. and Ram Adhar under Sec.302/34 of the IPC. The Trial Court relying on the evidence of Saroj Shukla (PW.1), Aslam (PW.4), Shyam Sunder Gupta (PW.5) and Dr. A. Akram (PW.6) the

investigating officer Parvez Hussain (P.W.7) and Dr. H.M. Saxena (PW.8) who had conducted post-mortem, convicted the appellants. An appeal taken by the appellants to the High Court also failed. The two are before us after the grant of special leave.

-3-

Mr. Vivek Vidyarthi, the learned counsel for the appellants has raised three primary arguments in the course of hearing. He has first pointed out that though prima facie it looked as if the FIR had been recorded promptly the facts showed otherwise as there was no evidence to indicate the time of which the special report had been delivered to the Magistrate and as this check failed it appeared that the FIR had been ante time. He has in addition urged that the delay in FIR had been utilized by the investigating agencies to procure false witness as it appeared that neither PW.1 (Saroj Shukla) nor PW.5 (Shyam Sunder Gupta) had been present and that there appeared to no motive for the murder. He had finally submitted that the evidence of the two witnesses PW.1 and PW.5 was liable to be discarded as it differed on material particulars which clearly falsified the prosecution story.

Mr. Ratnakar Dash, the learned counsel appearing for the State of U.P. has, however, supported the judgment of the Trial Court and has pointed out that Ram Adhar appellant was the real brother of Saroj Shukla (PW.1) and Kishan was his associate and there was absolutely no reason whatsoever to submit that PW.1 would involve her brother in a false case. He has also pointed out that in the face of the facts which had come on record there was no delay in the recording the FIR.

-4-

We have considered the arguments advanced by the learned counsel very carefully. It is the case of the prosecution that the FIR had been recorded at about 9.00 p.m. on 10th November, 1977. The perusal of the inquest

report shows that it was recorded at about 10.00 p.m. the same evening and the dead body along with various documents mentioned in the inquest report had reached the hospital at 11.00 a.m. on 11th November, 1977. It is true, as contended by Mr. Vidyarthi, that the special report had been delivered to the Ilaka Magistrate and though seen by him does not indicate the date or time of its receipt undoubtedly causing some suspicion, but looking at the overall picture more particularly that Saroj Shukla was celebrating Diwali alongwith her husband and two minor children in their house, her presence at the relevant time was to be expected.

Moreover, we have gone through the evidence of PW.4-Aslam, the rickshaw puller who had picked up the two appellants from near the cinema and had admitted Kishan (who he identified in Court as well) to hospital with gun shot injuries at about 8.45 or 9.00 p.m. on 10th November, 1977. Whereafter he had been medically examined by Dr.

Akram PW-6 at about 9.45 p.m. at the District hospital,

-5-

Unnao, who found one gun shot injury on his person. The prosecution story, therefore, that the incident had happened at about 9.00 p.m. is squarely borne out from this statement. Aslam bore no animosity towards the appellants and was a completely independent witness. To our mind, therefore, the mere fact that seems to be some omission as to the time and date of delivery of the special report loses significance on account of these crucial facts.

The second argument with regard to the presence of the eye witnesses has already been dealt with in part above. Suffice it to say that Diwali is a festival which is always celebrated at home with the family. The presence of Sham Sunder at his residence must, therefore, be taken as natural. It also has come in evidence that Saroj Shukla was living life out of wedlock with Ram Adhar who was her

uncle as well. This development was not liked by Saroj's family and constituted which was the motive for the murder. We, therefore, find absolutely no merit in the submission advanced by Mr. Vidyarthi that the motive for the murder had not been spelt out. Moreover, as already indicated above, the FIR had been lodged within an hour or so of the incident in which the names of the eye-witnesses the manner of the attack, the weapons used, the injuries caused, all corroborating factors, had been given. The mere fact therefore that that Ram Kishor (PW.2) another eye witness had been declared hostile does not in any way affect the veracity of the other two eye witnesses.

-6-

Mr. Vidyarthi has also brought to our notice specific portions of the evidence of PW.1 and PW.5 which to his mind appeared to be discrepant in material particulars. We have considered this aspect very carefully and observe that in the circumstances no such discrepancies exist. It has been borne in mind that the evidence in this case was recorded after more than four and half years of the incident and memory tends to dim with the passage of time. Undoubtedly PW.1 gave a version which was slightly discrepant vis-a-vis PW.5, insofar as the manner in which the actual incident happened, but on the broader aspect has to be kept in mind that PW.1 is none other than the sister of Ram Adhar-appellant.

Mr. Vidyarthi has also submitted that Kishan had given a statement under Sec.313 of the Cr.P.C. that he had sustained injuries in some other incident for which a separate case needed to be registered. Mr. Vidyarthi, however, very fairly stated that no case had in fact been registered. The story, therefore, that Kishan had suffered

-7-

injuries in some other incident is not supported by any

evidence whatsoever. In the light of the evidence of Aslam-PW.4 and Dr. Akram-PW-6 however, the story given by Kishan cannot even otherwise be believed.

Accordingly, the appeal is dismissed.

.....J.
(HARJIT SINGH BEDI)

.....J.
(T.S. THAKUR)

New Delhi,
February 16, 2010.