

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). 277 OF 2006

GANGA RAM

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

(With appln(s) for exemption from filing O.T.)

Date: 17/04/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE H.S. BEDI

For Appellant(s)

Mr. Nagendra Rai, Sr.Adv.

Mr. Imtiaz Ahmed, Adv.

Mrs. Naghma Imtiaz, adv.

for M/S.Equity Lex Associates,Adv.

For Respondent(s)

Mr. Siddhartha Dave, Adv.

Mr. Javed Mahmud Rao,Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is dismissed in terms of the signed judgment.

(Sukhbir Paul Kaur)

(Vinod Kulvi)

Court Master

Court Master

(Signed Judgment is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.277 OF 2006

GANGA RAM

...APPELLANT(S)

Versus

STATE OF U.P.

...RESPONDENT (S)

J U D G M E N T

In this appeal the judgment and order of the High Court of
Judicature at Allahbad in Government Appeal No.760 of 1981
dated 13th January, 2006 has been assailed. The High Court by its
impugned judgment and order while maintaining the order of

acquittal in respect of two other accused found the appellant Ganga

Ram guilty of the offence punishable under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life.

The occurrence giving rise to this appeal is said to have taken place at about 1.15 P.M. on 3rd July, 1979 in the outskirts of village Gandharpi in the Mahua groves of the deceased Ram Singh.

The case of the prosecution is that on account of enmity between

the deceased and the appellant herein, he was murdered by him with the assistance of two others namely, Uma Shankar and Jai Ram (since acquitted). The occurrence is said to

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have been witnessed by PW-1. Ram Charan, brother of the deceased and PW-2 Devi Prasad, a co-villager who were grazing their cattle nearby. PW-1 immediately went to his village, wrote out a written report and lodged a First Information report at police station Bindki at about 4.15 P.M. In the said first information report he had named all the three assailants including the

appellant and had also mentioned the fact that he and PW-2 Devi

Prasad had witnessed the occurrence. According to him, while

grazing his cattle, he heard an alarm being raised by the deceased

and then he saw that the deceased was being chased by all the three

accused. The deceased was surrounded by them whereafter the

appellant fired on the chest of the deceased as a result of which he

fell down and died. The prosecution examined PW-1 and PW-2 as

eye-witnesses. PW-4 is the doctor who performed the post mortem

examination, while PW-5 is the constable who came to the place of

occurrence at about 2.30 P.M. from the police out post. PW-6 and

PW-7 are the investigating officers.

The Trial Court by its judgment and order of 21st January,

1981 acquitted all the accused. It recorded a finding that the

motive alleged did not appear to be true and that the case of suicide

pleaded by the defence appeared to be more probable. Even the

manner of occurrence was doubtful. It rejected the evidence of

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all the eye-witnesses and acquitted all the accused persons.

Aggrieved by the judgment and order of the Trial Court the State preferred an appeal which has been partly allowed as earlier indicated.

Learned counsel appearing on behalf of the appellant submitted that though the Trial Court's judgment is not well written and may not impress this Court, he would still submit that the conclusions reached by the Trial Court may be accepted. He further submitted that since the High Court after appreciating the evidence on record has found the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code, this Court may appreciate the evidence of the alleged eye-witnesses and record its own findings.

In view of the fact that the High Court has reversed an order of acquittal, we permitted the counsel for the parties to take us through the entire evidence on record and with their assistance, we have perused the evidence on record.

We find no reason whatsoever to disbelieve the informant

who promptly lodged the F.I.R. No doubt, he happens to be the brother of the deceased but for that reason alone his evidence cannot be discarded. We do not find anything elicited in his cross examination which may discredit him. He had accompanied the investigating officer PW-7 to the place of occurrence and there is

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nothing to show that he is not speaking the truth. Learned counsel submitted that in the first information report, he had precisely mentioned the distance from which the firing took place. We do not find any such statement in the FIR but the witnesses have clearly deposed that the deceased was chased and thereafter surrounded by his three assailants. It was only thereafter that the appellant fired at him causing his death. Obviously the firing took place from very close range, we do not attach much importance to this submission. The motive suggested was not accepted by the Trial Court but in a case resting on direct evidence, not much importance can be attached to the motive alleged.

PW-2 is the other eye-witness who is a co-villager. He

does not appear to be an interested witness. The mere fact that he had deposed in one or two cases is no ground to disbelieve him. It is true that PW-7, the investigating officer recorded the statement on the following day but it also appears from the evidence of PW-7 that it had become quite dark and therefore, he did not record the statement of witnesses on that day. No doubt, he had stated that he searched the witnesses but he did not find them and therefore, the statement of the witnesses was recorded in the morning. In any event, so far as PW-2 is concerned, his name finds place in the first information report and therefore, his evidence

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cannot be doubted merely because he was examined the following morning.

The medical evidence is consistent with the prosecution case. The cause of death was found to be gun fire shot from a close range. Nothing has been pointed out in the evidence of the doctor which may create any doubt about the truthfulness of the

prosecution case.

The case of the defence was that the deceased committed suicide. We have evidence of three witnesses examined in support of the defence namely DW-1 to DW-3. One fact which is apparent is that none of them have mentioned the presence of the other. DW-2, no doubt, talks about the deceased committing suicide by shooting himself, DW-1 and DW-3 merely state that they had heard report of firing and thereafter they saw that the deceased had died. Their conduct however, appears to be rather unnatural. DW-1 continued grazing his cattle for 2-3 hours thereafter taking virtually no notice of the death of the deceased while DW-3 also does not appear to have reported the matter to anyone. Same is the quality of the evidence of DW-2. In our view, the High Court has rightly rejected the evidence of the three defence witnesses.

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We, therefore, find no merit in this appeal and the same is accordingly, dismissed.

.....J.

(B.P.SINGH)

.....J.

(H.S.BEDI)

New Delhi,

April 19, 2007