

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:43964-DB

Reserved on 03.04.2024

Delivered on 24.06.2024

Court No. - 1

Case :- CRIMINAL APPEAL No. - 430 of 1983

Appellant :- Jia Lal

Respondent :- State of U.P.

Counsel for Appellant :- Kunwar Shanti Prakash

Counsel for Respondent :- Govt. Advocate

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Ajai Kumar Srivastava-I, J)

1. This appeal is at the instance of appellant, namely, Jia Lal and is directed against the judgment and order dated 31.05.1983, passed by IIIrd Additional Sessions Judge, Faizabad in Sessions Trial Nos.350 & 352 of 1981, whereby appellant, Jia Lal has been convicted and sentenced to undergo life imprisonment under Section 302 I.P.C. along with the fine of Rs.1000/- and in default of payment of fine, he has further been directed to undergo three months additional rigorous imprisonment and under Section 25 of Arms Act, he has been directed to undergo six months rigorous imprisonment.

2. We have noticed that by means of impugned judgment and order dated 31.05.1983, the co-accused, Ram Prakash has been acquitted by the learned trial Court. However, there is nothing on record to show that

the impugned judgment and order dated 31.05.1983 passed by IIIrd Additional Sessions Judge, Faizabad in Sessions Trial Nos.350 & 352 of 1981 has been challenged by the State insofar as the acquittal of co-accused, Ram Prakash is concerned.

3. At the outset, it is relevant to mention that the sole appellant herein was granted bail during the pendency of this appeal by this Court vide order dated 20.07.1983.

4. From a perusal of records, it reveals that due to absence of appellant and his counsel, bailable warrant was issued against the appellant vide order dated 11.04.2007, thereafter, non-bailable warrant also came to be issued against the appellant. According to the report of Chief Judicial Magistrate, Faizabad dated 26.04.2019, appellant now resides in Nepal and has acquired the citizenship of Nepal. It is also reported that his sureties have already died.

5. The present appeal is very old and pertains to year 1983. In this case, we find that after admission of the appeal the appellant was granted bail, who kept appearing till 08.12.1983 and thereafter he did not appear and the counsel engaged by him also stopped appearing. In a case like one at hand, where the appellant is not appearing before us and his counsel is also not present before us, we find it appropriate to proceed to dispose of the instant appeal on its own merits after perusal of entire record carefully in the light of all the grounds which are mentioned in the memo of appeal. While doing so, we are supported by a judgment rendered by Hon'ble the

Supreme Court in **Surya Baksh Singh vs. State of U.P. : (2014) 14 SCC 222.**

6. We have heard submissions of Sri U.C. Verma, learned Additional Government Advocate-I, who has not only argued on behalf of the State but he has also taken us through the entire record of the case.

7. According to prosecution story, Sheo Pujan, the father of the deceased, Lalji, who had borrowed money from Kokila to construct a tubewell by mortgaging his agricultural plot in return. Sheo Pujan sought to repay the loan and reclaim his land but Kokila refused to return it. Rather, Kokila forcibly removed the tubewell's engine. Later, Sheo Pujan's dead body was found in a well. Kokila had three brothers, Ram Tirath, Ram Daras and Chetan. The appellant/accused, Jiyalal and co-accused, Ram Prakash are sons of Chetan and Ram Tirath respectively. A year prior to registration of this case, Kokila was murdered. Four persons, including Lal Ji and his brother Binod and two other persons, namely, Nazrey and Shyam ji were implicated in Kokila's murder case, which was pending in the court of the Sessions Judge, Faizabad. Lal Ji and Binod were on bail, while the other two were in jail. The case was fixed for evidence on 16.04.1981. On 16.04.1981 at about 9:30 AM, Lal Ji, Binod and their friend Mobin were returning from their counsel's house. While returning from their counsel's place Lal Ji, feeling unwell, laid down on the Takhta of his Advocate. At about 9:45 AM, the accused persons, Jia Lal armed with a gun and co-accused, Ram Prakash armed with an open knife,

arrived at the spot and fired at Lal Ji from behind, causing serious injuries to Lal Ji with the firearm. Bystanders chased and successfully apprehended both accused persons on the Lucknow-Faizabad road.

8. On the basis of aforesaid written report, Ext. Ka-1, First Information Report, Ext. Ka-10(A) was registered as Crime No. 280 of 1981, under Section 302 I.P.C. and 25 Arms Act, at Police Station Kotwali, District Faizabad.

9. As per postmortem report of the deceased, Lalji, Ext. Ka-5, which has been proved by Dr. K.P. Singh, PW-4, following injury was reported on the person of the deceased:-

1	Penetrating wound 2.5 cm in diameter on right side of the mid line at a distance of 2 cm at T-10 & T-11 level. Margins are lacerated echymosised and inverted, wound is directed towards left (wound of entry)
2	A penetrating wound, 1 cm in diameter, is situated on the left side of the chest in the 6 cm intercostal space on the mid-axillary line. The margins are everted, with no ecchymosis observed.
3	A penetrating wound, 1 cm in diameter, is located 2.2 cm below injury no. 2. The margin is everted, with no ecchymosis present
4	It is also opined by him that the injuries were sufficient to cause death of the deceased in the ordinary course.

According to postmortem report of the deceased, Lalji, Ext. Ka-5, the cause of death is reported to be shock and haemorrhage as a result of antemortem injuries.

10. After registration of the case, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C., prepared the site plan, Ext. Ka-15 and upon completion of investigation, submitted charge-sheet, against accused-appellants.

11. The accused-appellant was charged for the offences under Sections 302/34 I.P.C. and 25 Arms Act, which were read over and explained to him, to which, he pleaded not guilty and claimed to be tried.

12. To bring home guilt of accused-appellant, the prosecution has examined as many as eight prosecution witnesses i.e. PW-1, Balram Gaur, PW-2, Constable Tulsi Ram, PW-3, D.S.P. Raj Bansh Singh, PW-4, Dr. K.P. Singh, PW-5, Dr. Indra Dev, PW-6, S.I. Lal Bahadur Singh, PW-7, Ballistic Expert Ram Asharey Pandey and PW-8, Inspector Yogendra Nath Singh.

13. After conclusion of prosecution evidence, statement of accused-appellant was recorded under Section 313 Cr.P.C. The accused-appellant has stated the prosecution case to be false, claimed himself to be innocent and also stated to have been falsely implicated.

14. DW-1, Vendeshwari was examined by the accused-appellant in his defence.

15. CW-1, Ram Darash Singh and CW-2, Noral Hasan were examined by the learned trial Court as court witnesses.

16. The learned trial Court vide impugned judgment and order dated 31.05.1983 convicted the accused-appellant under Section 302 I.P.C. and 25 of Arms Act.

17. Aggrieved by the impugned judgment and order dated 31.05.1983, the accused-appellant has preferred the instant criminal appeal.

18. From a perusal of memo of appeal, it transpires that the main grounds on the basis of which the impugned judgment and order dated 31.05.1983 is being assailed were that the medical evidence is in conflict with the oral evidence regarding the incident, which belies the prosecution story. It is stated in the memo of appeal that the appellant's arrest near the alleged place of the incident was concocted, and evidence in this regard was fabricated. Furthermore, according to the appellant, the prosecution failed to explain the injuries on the person of the accused-appellant. In fact, the prosecution suppressed material facts and relevant evidence. The witnesses produced were biased and partisan. It is stated in the memo of appeal that the appellant has been falsely implicated in this case. The investigation of this case was tainted and unfair because it stemmed from fabricated documents, specifically the first information report, which was lodged after consultation and deliberation and was also antedated.

19. On the aforesaid premise, it was prayed in the memo of appeal that the appeal be allowed and that the impugned judgment and order dated 31.05.1983 be set aside.

20. Learned A.G.A. has submitted that this case is based on ocular testimonies of PW-1, Balram Gaur, and PW-2, Constable Tulsi Ram; therefore, the presence or absence of motive loses its significance. His further submission is that having regard to the manner of commission of the offence, the first information report cannot be said to be antetimed. He has also submitted that the prosecution witness, PW-1, Balram Gaur, though related to the deceased, has withstood rigorous cross-examination and has supported the prosecution case in all material aspects. The postmortem report also corroborates the same; therefore, it cannot be said that the prosecution story stood belied by the postmortem report Ext. Ka-5 of the deceased. His submission is that though a careful scrutiny of related witnesses is required, however, the fact that PW-1, Balram Gaur, is related to the deceased itself is no ground to discard his testimony. His further submission is that the prosecution has successfully proved its case against the present appellant, from whose possession a SBBL Gun No. 2172, Ext. 1, along with an empty cartridge, Ext. 2, and two live cartridges, Exts. 3 and 4 respectively, were recovered at the time of his arrest by PW-2, Constable Tulsi Ram, whose presence at the place of occurrence was very natural. A prompt first information report in this matter came to be lodged. There is nothing on record to show that the same is antetime. His further submission is that the prosecution has proved its case against the appellant on the basis of cogent and reliable testimonies of prosecution witnesses. The appellant has been convicted by the impugned judgment and order

dated 31.05.1983 which is well discussed and reasoned, wherein no interference by this Court is warranted.

21. Having heard learned A.G.A. for the State and upon a close scrutiny of entire prosecution evidence in the light of various grounds which were taken by the appellant to assail the impugned judgment and order dated 31.05.1983 we find that the first informant, Balram Gaur was examined by the trial Court as PW-1.

22. From a perusal of the testimony of PW-1/first informant, Balram Gaur, it transpires that one Kokila was killed some time prior to the date of the incident. Kokila had three brothers, namely, Ram Tirath, Ram Daras and Chetan. The present appellant, Jia Lal was the son of Chetan, thus, he happens to be the nephew of Kokila, whereas the other co-accused of this case, Ram Prakash is the son of Ram Tirath, the brother of Kokila. Admittedly, Kokila was killed about one year before the date of the incident. The trial in respect of Kokila's murder was being conducted in the Court of Sessions Judge, Faizabad. In which, Lal Ji, Binod, Nazrey and Shyam Ji were accused.

23. According to this witness, he used to attend that session trial for doing parvi of the same. On 16.04.1981, this witness, along with Lalji and Mobin, had gone to the house of Advocate, Shiv Prasad Mishra at about 9:00 A.M. Mobin had come that day because he was a friend of Lalji, who was also an accused in the aforesaid trial. From the house of Advocate, Shiv Prasad Mishra, this witness alongwith Lalji and Mobin came to the Civil Court and sat on the takhat of Advocate Shiv Prasad Mishra at about

9:45 A.M. As Lalji was not feeling well, therefore, he laid down on the takhat of Advocate, Shiv Prasad Mishra. All of a sudden, the appellant, Jia Lal came from the northern side, armed with a gun, and opened fire at Lalji. He was accompanied by the other co-accused, Ram Prakash, who was armed with an open knife. Lalji sustained a firearm injury, which was inflicted by the present appellant, Jia Lal.

24. This witness and other people tried to catch hold of Jia Lal and Ram Prakash, who ran towards the northern side. The accused persons were apprehended by this witness with the help of a constable Tulsi Ram and D.S.P. Raj Bansh Singh, who had arrived at the spot. A tea vendor of the Civil Court, namely, Virendra Kumar also helped these persons in apprehending the accused persons.

25. According to this witness, a single-barrel gun was recovered from the possession of the present accused-appellant, Jia Lal. Two live cartridges were also recovered from his possession, whereas an empty cartridge was found in the barrel of the gun. An open knife was recovered from the possession of the accused, Ram Prakash. They were arrested by the police. After their arrest, they were brought to the police station Kotwali by a jeep, where this witness wrote a written report in his own handwriting and submitted the same, which has been proved as Ext. Ka-1. This witness has also proved the recovery memo of a SBBL Gun No. 2172 as Ext. 1, along with an empty cartridge as Ext. 2 and two live cartridges as Exts. 3 and 4 respectively. Whereas, the knife which

was recovered from the possession of accused Ram Prakash has been exhibited as Ext. 5.

26. PW-2, Constable Tulsi Ram, has deposed that on 16.04.1981, he was posted in the office of D.I.G., Faizabad. On 16.04.1981 at about 9:45 A.M., this witness had gone to the shop of Virendra to buy betel (paan). The D.I.G. Office is situated on the other side of the intervening road between D.I.G. Office and Civil Court. While this witness was returning after buying betel (paan), he heard some commotion and saw two persons running towards him, who were being chased by some other persons. One of the person, who was trying to flee away, was carrying a gun and he was caught by this witness, whereas the other person, who was trying to flee away, was caught by Virendra Kumar, the shopkeeper. The man who was caught by this witness disclosed his name as Jia Lal, whereas the other person caught by Virendra Kumar said that his name is Ram Prakash. At the time of arrest of the accused by this witness, D.S.P. Raj Bansh Singh had also arrived with other police personnel. This witness has also proved the fact of the recovery of a SBBL Gun No. 2172 as Ext. 1, along with an empty cartridge as Ext. 2, and two live cartridges as Exts. 3 and 4 respectively from the possession of the present appellant, Jia Lal, and the recovery of a knife, as Ext. 5, from the possession of the other accused, Ram Prakash.

27. PW-3, D.S.P. Raj Bansh Singh, has stated that on 16.04.1981, he was posted as C.O. Faizabad. He was in his office at about 9:30 A.M. At about 9:45 A.M., he heard

the noise of someone running away after firing a shot. He sent his constable by his official jeep. According to this witness, the appellant and co-accused, Ram Prakash were apprehended there with the help of PW-2, Constable Tulsi Ram, and a shopkeeper, Virendra Kumar.

28. If we examine the testimony of PW-1, Balram Gaur, PW-2, Constable Tulsi Ram and PW-3, D.S.P. Raj Bansh Singh carefully, we find that PW-1, Balram Gaur has clearly stated that the present appellant was armed with a single-barrel gun, who shot the deceased dead on 16.04.1981 by opening fire at the deceased. The place of occurrence is the Civil Court campus and according to the prosecution story, the appellant along with co-accused, Ram Prakash were apprehended while they were trying to run away from the scene of occurrence but could not go too far in their attempt to escape. According to PW-1, Balram Gaur, he could apprehend the appellant and the other co-accused, Ram Prakash with the help of PW-2, Constable Tulsi Ram. The testimony of PW-1, Balram Gaur, to the effect that he had seen the appellant firing at the deceased, is further corroborated by the fact that the present appellant along with co-accused, Ram Prakash, were apprehended by this witness alongwith the PW-2, Constable Tulsi Ram and PW-3, D.S.P. Raj Bansh Singh.

29. It is pertinent to mention the fact that PW-2, Constable Tulsi Ram is a police personnel and there is nothing on record to show that PW-2, Constable Tulsi Ram had any kind of grudge or enmity against the present appellant or the co-accused, Ram Prakash. He had, thus,

no reason to falsely implicate the present appellant. His presence near the place of occurrence and the place from where the appellant alongwith co-accused, Ram Prakash were apprehended is also very natural.

30. PW-1, Balram Gaur and PW-2, Constable Tulsi Ram both have proved the fact of the recovery of a SBBL Gun No. 2172 as Ext. 1, along with an empty cartridge as Ext. 2, and two live cartridges as Exts. 3 and 4 respectively from the possession of the present appellant, Jia Lal and the recovery of a knife, as Ext. 5, from the possession of the other accused, Ram Prakash. The investigating officer has proved the seizure memos as Exts. Ka.13 and 14, respectively.

31. The manner of assault by the present appellant by opening a fire at the deceased is also corroborated by the medical evidence. PW-4, Dr. K.P. Singh has proved the postmortem report of the deceased as Ext. Ka-5. According to postmortem report of the deceased, Ext. Ka-5, the deceased had died due to shock and haemorrhage as a result of antemortem firearm injury. The PW-4, Dr. K.P. Singh, had also refuted the suggestions given by the defence during trial that such injuries were not possible to be inflicted on the body of the deceased having regard to the prosecution story. Therefore, we do not find this postmortem report to be incompatible with the eye witness account of PW-1, Balram Gaur and PW-2, Constable Tulsi Ram.

32. Insofar as the question of the present appellant having sustained some injury is concerned, it is mentioned

in the memo of appeal that the prosecution has failed to explain injuries on the person of the appellant and such injuries were not mentioned in the first information report itself. In this regard, it is no more *res integra* that non-explanation of injury on the person of the accused is not fatal in every case.

33. The injury report of the appellant, available as Ext. Ka-4, reveals several injuries of minor nature on his person. However, considering the fact that according to the prosecution story, he was trying to run away from a crowded place like the civil court after this incident, and was apprehended by various people including PW-1, Balram Gaur, and PW-2, Constable Tulsi Ram, who was ultimately apprehended by PW-1, Balram Gaur, and PW-2, Constable Tulsi Ram, there is every possibility that he might have sustained injuries of the nature which were reported on his person on the date of the incident in his injury report Ext. Ka-4. Therefore, the fact that such injuries were not mentioned in the first information report does not adversely affect the otherwise proven prosecution case.

34. The upshot of aforesaid discussion is that the prosecution has successfully proved its case against the present appellant. Learned trial Court has appreciated the prosecution evidence in its correct perspective which does not suffer from any illegality or infirmity.

35. In the light of cogent and reliable testimonies of aforesaid prosecution witnesses, we do not find any substance in the various grounds mentioned in the memo

of appeal on the basis of which the impugned judgment and order dated 31.05.1983 was sought to be assailed.

36. It is no longer res integra that interference by the appellate court with the findings recorded by the learned trial court is not warranted unless there is perversity in the impugned judgment.

37. In view of the aforesaid overall facts and circumstances of this case, we do not find any merit in the instant appeal, which deserves to be dismissed and is, accordingly, **dismissed**.

38. The appellant, Jia Lal is on bail. His bail bonds are cancelled. Sureties, who have already died, are discharged. The appellant shall surrender before the concerned Court to serve out the remaining sentence within eight weeks from today, failing which, learned trial Court concerned shall issue warrant for his arrest for serving out the remaining sentence.

39. Let the record of trial court along with a copy of this order be transmitted forthwith to the learned trial court concerned for necessary information and compliance.

(Ajai Kumar Srivastava-I, J)

(Attai Rahman Masoodi,J)

Order Date :- 24.06.2024

A.Dewal