

Ramdeo and ors. Vs. State

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Court : Allahabad

Decided On : Aug-21-1962

Reported in : 1963CriLJ198

Judge : S.K. Verma and ;Gyanendra Kumar, JJ.

Appellant : Ramdeo and ors.

Respondent : State

Judgement :

S.K. Verma, J.

1. These are two connected criminal appeals. Criminal Appeal No. 1757 of 1961 has been filed by Ramdeo, Uma, Abhiraj, Gurbhari and Sahban while the appellant in the connected Criminal Appeal No. 1762 of 1961 is Jagannath. All the appellants have been convicted by the learned Sessions Judge of Deoria of offences punishable under Section 302 read with Section 149 and Section 148 I.P.C. Each of the appellants has been sentenced to imprisonment for life for the former offence and to three years' R.I. for the latter offence. The sentences have been ordered to run concurrently, Eight other persons also stood their trial along with the present appellants but they have been acquitted by the learned trial Judge and we are no longer concerned with them.

2. The appellants, the eight acquitted accused persons and the complainant Ram Nakshatra are residents of village Maheshpur, Police, Station Rudrapur, district Deoria. The deceased Ram Narain, brother of the complainant, was also a resident of this very village.

3. The prosecution case, stated briefly, was as follows : -- About eight or nine years prior to the date of the occurrence giving rise to these appeals, proceedings under Section 107 Cr. P. C. took place between the complainant, Ram Nakshatra, and some other persons on one side and some of the accused persons on the other side. About four years prior to the date of occurrence, Vashishtha, nephew of appellant Ramdeo, was murdered. Ram Narain deceased, his brother Ram Nakshatra, complainant, and a number of other persons some of whom have been cited as prosecution witnesses in this case were prosecuted for that murder. They were convicted by the trial court but were acquitted on appeal. This order of acquittal was passed about one and a half years prior to the date of the occurrence. The proceedings under Section 107 Cr. P. C. and the acquittal of the persons charged with the murder of Vashishtha are said to have been the motive for the crime which was committed on the 3rd of April 1961. On that date, at about 9 A. M., according to the first information report, and shortly after sun-rise, according to the statements of the eye-witnesses. Ram Narain deceased, accompanied by his brother Ram Nakshatra, Dhandi, Chillar, Ramdas and Mahtam, was having a Pipal tree cut into pieces.

The Pipal tree had been taken by Ram Narain from Ganga who was a relation of his. One of the trees was cut and the other was being cut on the day of the occurrence. A man in Police uniform came there and asked Ram Narain whether he had a permit for having the tree cut. Ram Narain replied that he had no permit whereupon he was asked to accompany the man in Police uniform to the Sub-Inspector. Ram Narain stood up. Just then, a bullock-cart with rubber tyres was seen coming in the direction where Ram Narain was. Seeing the bullock-cart, the man caught hold of Ram Narain and mentioned to the driver of the bullock-cart to hurry. The six appellants and the eight acquitted accused persons jumped from, the bullock-cart, armed with Gandasa, spears and Gupti, They all launched a concerted attack on Ram Narain with their respective weapons. Ram Narain died

instantaneously. The assailants thereupon ran away, leaving the bullock-cart, which was covered with a Jajim, on the spot. Inside the bullock-cart were found two spears and some brick-bats.

4. Ram Nakshatra dictated a report to Ravi Pratap Singh (P. W. 4), Ex. Ka. 1. Along with this written report and the dead body of Ram Narain, Ram Nakshatra, in the company of a number of persons, went in the bullock-cart left by the assailants to Police Station Rudrapur, situate at a distance of three miles, and lodged the report there at 11.30 A. M. Rama Nand Rai, Station Officer of Police Station Rudrapur (P. W. 9), was present at the police station. He held an inquest on the dead body, prepared the Panchayatnama and recorded statements of the persons who went with the dead body and, thereafter, proceeded to the spot of occurrence and reached there at 3 P. M. He inspected the locality and prepared a site plan. The accused persons were traceless and they surrendered subsequently.

5. There cannot be the slightest doubt that Ram Narain was brutally assaulted and done to death by some person or persons, as alleged by the prosecution. The autopsy on his dead body was performed by Dr. M. M. Gupta (P. W. 2). There were no less than thirty-five antemortem punctured wounds on various parts of the body. Internal examination revealed fractures of the skull bones and of two right ribs. The pleural cavity was full of blood. Death, in the opinion of the doctor, was due to shock and haemorrhage resulting from the multiple injuries.

6. The question for consideration is whether the guilt of the appellants has been established by the evidence led by the prosecution.

7. It is not quite clear to us from the material on the record exactly at what time the occurrence took place. The time of the occurrence mentioned in the first information report that was lodged is 9 A. M. Ram Nakshatra (P. W. 1) stated that the occurrence took place two or three gharis after sunrise. Dhanai stated that when the bullock-cart left for the police station it was two gharis after sunrise. This means that, according to the eye-witnesses the occurrence took place at sunrise or shortly thereafter. We consider it to be a serious discrepancy in the prosecution case.

8. Exactly how the first information report came into existence and who provided the facts which formed its basis are also questions which are shrouded in mystery. According to Raim Nakshatra, he dictated the report to Ravi Pratap Singh. It was taken down, first, in pencil and then it was faired out. Ram Nakshatra stated as follows:--

Village Suwarahs is 100 paces away from the place of occurrence. The report was written where the tree was being cut. The report was written in the village.

Here, again, there is a serious discrepancy, Ram Nakshatra went on to state that the report was faired out at the door of Rajpati who was his next-door neighbour. Rain Nakshatra is a resident of village Maheshpur' which, according to the witness, is at a distance of one mile from the place of occurrence. We, therefore, do not know whether the report was written at the place of occurrence r in village Maheshpur. If the report was written in village Maheshpur the prosecution allegation action that the dead body of Ram Narain was taken from the place of occurrence in the bullock cart straight to the police station is, obviously, incorrect. Ravi Pratap Singh, in his examination-in-chief, stated as follows;

Ram Nakshatra dictated the report to me. Ex. Ka-i is the same report that I wrote. It was read out to Ram Nakshatra. I faired out a report writ en by the pencil. Ex. Ka-i read out to the complainant.

In cross-examination Ravi Pratap Singh stated as follows --

I wrote Ex. Ka-i on the basis of a Pencil Report and not on the dictation of someone. The pencil-report was not mine. I cannot say who was the scribe of the pencil-report. The report was not written in the village.

According to Ram Nakshatra's statement, when the report was written Bans Bahadur, Balwant, Sant Gopal, Rajmani, Kailash and Mahatam were present. The presence of these persons is significant. Mahatam is the son of Banraj, who was an accused along with Ram Narain and Ram Nak-shtra in the case arising out of Vashishtha's murder. In that very case Rajmani Tewari and his three nephews, including Kailash, were also accused with Ram Nakshatra and Ram Narain. It is,

therefore, not unreasonable to infer that at least some of the names mentioned in the report must have been written at the instance of the persons present. This inference becomes all the more irresistible in view of the fact that we do not know who was the real author of the report.

9. Coming now to the eye-witnesses of the occurrence, they are Ram Nakshatra (P. W. (1), Dhanai (P. W. 3) and Ram Basan (P. W. 5).

10. According to Ram Nakshatra and the first information report, Dhanai, Ramdas, Chillar and Mahatam were the persons cutting the tree and, on the alarm that was raised, there arrived Ram Basan, Ram Narain (not to be confused with the deceased Ram Narain), Supe, Gulab and Ravi Pratap Singh of village Maheshpur and Banarsi, Chillar, Ramdas, Mahatam,, Ram Narain, Supe and Gulab have not been examined. Only Dhanai, Ram Basan and Ram Nakshatra appeared as eye-witnesses in the case. Ravi Pratap Singh was examined but he was not an eye-witness and he stated that he saw some persons running away but he could not recognise them.

11. The three eye-witnesses produced' are partisan witnesses. Ram Nakshatra is the deceased's own brother. Dhanai is a cousin of 'Prabhu who was co-accused with Ram Nakshatra and deceased Ram Narain in Vashishtha's murder case. Ram Basan is a nephew of Ravi Pratap Singh who appeared as a defence witness for Ram Narain in Vashishtha's murder case. Ram Basan's uncle, Balwant, was also a co-accused along with Ram Narain and Ram 'Nakshatra in that murder case. All the witnesses are residents of village Maheshpur, situate at a distance of one mile from the place of occurrence. It is surprising that not one witness of village Suwaraha, which is at a distance of only a hundred paces from the place of occurrence, has been produced. Moreover, the statements of these witnesses are full of discrepancies and serious flaws. Ram Nakshatra alleged that the man in police uniform, accused Laljee and Jagannath appellants were armed with Guptis. In cross-examination one stated as follows: -

The Sipahi came from the west. He had a stick. I cannot say what the stick contained inside. Laljee and Jagannath had something like a Gupti in the hand. I cannot say what it had inside it.

If the witnesses did not know what the stick contained inside it, we fail to see how he could allege that these persons were armed with Guptis.

The other eye-witnesses repeated the same allegations parrot-like. Ram Nakshatra made a categorical statement to the effect that he saw Ram Narain being assaulted with spears and Gandasa and that he saw Gandasa injuries on Ram Narain's person when he had fallen down on the ground. The post-mortem report and Dr. M. M. Gupta's testimony show that there was no Gandasa injury on Ram Narain's body.

12. The bullock-cart has, obviously, been introduced to connect appellant Ramdeo with the crime, because it is alleged that the Jajim on the bullock-cart had the name of Ramdeo written on it. It is not denied by the defence that the bullock cart and the Jajim belonged to Ramdeo. It has, however, come in the prosecution evidence that Ramdeo's Khalihan was at a distance of only fifty or sixty paces. Dhanai stated that Ramdeo's harvested crop was lying in Ramdeo's field at a distance of about fifty or sixty paces from the place of occurrence. He stated, further, that Ramdeo's son, Adya, had been loading his crop on this very bullock-cart since morning on the day of occurrence. Ram Basan stated that he was going to village Suwaraha for the purpose of borrowing bullocks. When he passed by the scene of occurrence, the sun had not yet risen and at that time he saw the bullock-cart standing at Ram-deo's Khalihan and the Jajim lying on the ground. He went to village Suwaraha, situate only at a distance of a hundred paces from the place of occurrence, could not get the bullocks and he immediately returned and witnessed the occurrence.

According to him, the sun was just rising at the time. We fail to see how and why in this brief interval of time the fourteen accused persons would get into the cart and ride in it to the place of occurrence for committing the murder of Ram Narain. They did not need the cart, for they could easily have run to the place of occurrence and murdered Ram Narain, if they wanted to do so. Ram Nakshatra made the astounding statement that when he saw the cart for the first time it was about twenty to twenty-five paces to the south of Zafrabad, as, according to his own statement, Zafrabad is at a distance of about half a mile from the scene of

occurrence. The defence suggestion was that the bullock-cart had been brought forcibly from Ramdeo's Khalihan for the purpose of carrying the dead body of Ram Narain and also connect Ramdeo with the crime.

Ram Bachan (D.W. 2) was produced in support of the defence suggestion. In view of the statements made by P. W. Dhanai and D. W. Ram Bachan, we are inclined to accept the defence version, namely that, whoever Ram Narain's assailants were the accused did not go to the place of occurrence in the bullock-cart with dunlop tyres belonging to Ramdeo and that this cart was brought from Ramdeo's Khalihan for the purposes indicated by us above. Dhanai as well as Ravi Pratap Singh, neither of whom had any occasion to have a soft corner for the accused persons, stated that there were two or three persons in police uniform and not one, as alleged by 'Ram Nakshatra. According to Ram Nakshatra, Ram Narain died instantaneously but Dhanai would have us believe that after the assault. Ram Narain sent Ram Nakshatra to fetch the Sabhapati and Ram Nakshatra went to the village to call the Sabhapati.

13. It is fairly obvious to us that at least some of the accused persons were falsely implicated. Satya Ram accused produced Dr. Jain who was incharge of the Eye-Hospital, He stated that Satya Ram was under his treatment as an indoor patient from the List of April 1961 to the 14th of April, 1961. He gave his statement on the basis of entries in the Hospital Register. He also stated that Satya Ram's son was in attendance throughout his stay in the Hospital. The learned Judge has referred to the statement of Dr. Jain and, after a few platitudes about the weakness of human memory, he observed that the witness's evidence should be viewed with caution. He has, however, failed to enlighten us about the conclusion at which he arrived, after viewing the witnesses's testimony with caution. We see absolutely no reason to disbelieve Dr. Jain's statement. Satya Ram is eighty years old and Dr. Jain's statement finds corroboration from the statement of P. W, 4 Ravi Pratap Singh who stated as follows:-

Prior to the occurrence Satya Ram had come to Deoria for the Cataract operation.' Satya Ram is eighty years old and we have not the slightest doubt that he has been falsely named. The learned trial Judge acquitted eight of the accused

persons, including Satya Ram, on the ground that those eight persons had a weaker motive for participation in the crime. He distinguished the cases of the six appellants before us on the ground that they had appeared as prosecution witnesses in the case arising out of Vashistha's murder. In our view, that' can hardly be a safe criterion.

14. Dhanai named only eleven accused persons and did not name Ramdeo, Uma and Ram Murti. The learned trial Judge sanctioned a novel procedure by permitting the prosecuting counsel to refresh the witness's memory by reading out his statement recorded during investigation. This was wholly illegal and should have never been permitted. The prohibition against the use of such statements, except for the purposes mentioned in Section 162 Cr. P. C, is absolute. The learned trial Judge has not indicated under what provision of law he permitted the procedure. The learned Deputy Government Advocate has referred to Section 159 of the Indian Evidence Act. That section was not intended for this purpose; otherwise the provisions of S. 162 Cr. P. C. would be rendered completely nugatory. The decision of a Division Bench of this Court in *Bhondu v. Rex* : AIR1949 All364 is directly in point. Reference in this connection may also be made to a decision of a Division Bench of the Calcutta High Court in *Superintendent and Remembrancer of Legal Affairs, Bengal v. K. Zahiruddin*, AIR 1946 Cal 483 at p. 486. Ram Basan named only nine accused persons and he did not name Ramdeo, Ram Murat, Uma, Surendra and Harbilas. It should be borne in mind that Ramdeo is the uncle of Vashishtha who was murdered and, according to the prosecution case, he would have had the strongest motive, and yet, two of the eye witnesses have omitted to name him in their statements.

15. There are a number of circumstances which indicate that Ram Narain was murdered . some time in the night and no one really witnessed the occurrence. Ram Nakshatra stated as follows:-

In the previous night Ram Narain had slept near the tree. There is no house near about the tree. There was only one Pipal tree here (sic). The tree under which Ram Narain used to sleep and where Ram Narain was assaulted and murdered and where I was cutting logs is the same Pipal tree which belonged to Ganga and

his co-sharers.

Dhanai and Ram Bachan stated that there was blood on a Chatai which was near the wood which was being cut, but according to the prosecution case, Ram Narain was sitting on a log of wood at the time of the assault. We, therefore, fail to understand how blood could get on the Chatai, unless Ram Narain had been sleeping on it. According to Ram Nakshatra, he and the persons who were cutting the tree were armed with Tan-gas. It is surprising that no attempt whatsoever was made to rescue Ram Narain, although half a dozen persons were there armed with Tangas. Ram; Narain himself, according to Ram Nakshatra, was 'stout and long'. The post-mortem report shows that Ram Narain's bladder was full. It is unfortunate that Dr. Gupta has not said anything about the contents of the intestines. The fact that the deceased's bladder was full of urine shows that, in all probability, he had had a few hour's sleep at the time of his death. These circumstances irresistibly lead us to the inference that Ram Narain was alone and, in all likelihood, asleep when the assault was launched upon him and it is impossible for us to say, on the evidence on the record, who the assailants were. In our opinion, the conviction of the appellants is unjustified and it must be set aside.

16. We, therefore, allow these appeals, set aside the conviction and sentences of the appellants and acquit them. They are on bail. They ' need not surrender and their bail bonds are discharged.

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