

Rajendra and anr. Vs. the State

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SooperKanoon Citation : sooperkanoon.com/464776

Court : Allahabad

Decided On : Jan-18-1968

Reported in : 1968CriLJ811

Judge : R. Chandra and ;K.C. Puri, JJ.

Appellant : Rajendra and anr.

Respondent : The State

Judgement :

R. Chandra

1. This is an appeal by Rajendra Prasad (27) and Bashiruddin (27) residents of village Moonda Sarkata, Police Station Haiderabad, district Kheri, against their conviction under Section 302 read with Section 84 of the Indian Penal Code, by the Sessions Judge Kheri. Each of them has been sentenced to death. The Sessions Judge has also made the usual reference for confirmation of the death sentence passed by him on the appellants. (This represented appeal was filed on 30th October, 1967. It appears that on 9th November, 1967 the condemned prisoners also preferred appeals from jail, and they were ordered to be connected with the presented appeal, which had been filed earlier). We have heard the learned Counsel for the appellants and the Assistant Government Advocate for the State.

2. Bam Saran deceased (60) was a Brahmin by caste. He was a widower. The only members of his family were his young daughter-in-law Shanti Devi P.W. 6 who was a widow and his grandson aged about 8 or 9 years. They were living together in village Moonda Sarkata, Police Station Haiderabad, district Kheri. The relations of Bam Saran with Basiruddin appellant and members of his family were strained for some time. Rajendra Prasad appellant was a close neighbour of Bam Saran. Both the appellants were fast friends. They sometimes misbehaved with Shanti Devi. Whenever Ram Saran happened to see it, he reprimanded them. He also asked Rajendra Prasad to give up the bad company of Bashiruddin.

3. On the afternoon of 7th April, 1967, Bam Saran again found both appellants near the door of his house where Shanti Devi was also present. He (Ram Saran) reprimanded them for their misbehavior and in that connection hot words were exchanged. After taking his evening meals, Ram Saran came out of the house as usual and went to sleep on a cot under the thatch (situated outside the house). His daughter-in-law and the grandson slept inside the house. That house was made of tatias (screens of Arhar stalks).

4. At about midnight, the appellants went near the cot of Bam Saran where he was sleeping. They gagged and carried him to Rajendra Prasad's thatch situate close by. His cries attracted his daughter-in-law Shanti Devi. She rushed out of the house and saw her father-in-law being beaten with dandas under Rajendra Prasad's thatch, by the appellants. There was also a lighted lantern Ext. 8 kept in a niche of the well. She immediately raised an alarm. On hearing her cries, Lalloo Teli P.W. 18 who lived at a distance of 85 paces towards south-east arrived there. In spite of their arrival, the appellants did not stop beating. Soon. Gulzari Lal Bania P.W. 11 whose house was 50 or 60 paces towards west also came there. He was followed by Rameshwar Dayal Brahmin, Sabhapati of the village and his cousin Chandrika who also possessed torches. They lived at a distance of about 100 paces from there. Raja Bam P.W. 10 who lived 40 or 50 paces towards west. Prem Ram P.W. 12 who lived about 40 paces towards south had also joined Rameshwar Dayal near his house, and they all arrived together. From a distance of 7 or 8 paces they saw the Appellants assaulting Earn Saran with dandas. When they challenged them, the assailants fled away towards north.

5. Thereafter, all the witnesses went near Bam Saran. By that time almost the entire village had collected there. They found multiple injuries on the body of Bam Saran. Blood was also lying on the ground on two places under the thatch of Rajendra Prasad which was just in front of his house. Bam Saran told them about the altercation which he had with the appellants on the eve of the incident of his being gagged, of being carried to Rajendra Praaad's thatch of having been forced to sign on a paper and of being assaulted by the appellants.

6. The bullock cart could not be arranged till the next morning. Tauley chaukidar P.W. 4 lived in another village. He also arrived in the morning. Ram Saran was put on the bullock-cart And they started for the thana, but as soon as the cart started, Bam Saran expired. So, the idea of taking the dead body to the thana was abandoned. Shanti Devi P.W. 6 dictated the report Ex. Ka-1 to Raja Bam P.W. 10. That report was delivered to Tauley Chaukidar. He took it to the police station Haiderabad and delivered it at 9.80 A.M. (The distance of the police station was about six miles.) Bisram Singh P.W. 9, Clerk Constable, prepared the first information report. Ex. Ka-8 is on the basis of that written report-Station Officer Ahaen Ali P.W. 15 was present at the thana when the report was made. He left for the scene of occurrence and reached thereat 11 A. M. He interrogated Shanti Devi and prepared the inquest report Ex. Ka-2. The dead body of Bam Saran was dispatched through Cons. table Sheo Saran Lal P.W. 8 for postmortem examination.

The postmortem examination was conducted by Dr. K.K. Kapur, Medical Officer Gola, on 9th April, 1907 at 9-80 A.M. He found the following ante-mortem injuries on the dead body of Ram Saran:

1. Lacerated wound 1' x ' x bone deep left frontal region.
2. Lacerated wound 1' x 1' x bone deep centre of occipital region.
3. Abraded contusion 1' x ' and 1' x bluish in colour above the right eye-brow situated externally.
4. Lacerated wound x ' x ' below right eye.

5. Lacerated wound 1' x ' x bone deep, left Bide of chin situated horizontally.
6. Contusion 1' x 1' bluish in colour, left mandi-bular region, in the centre.
7. Abrasion ' x ' outer side of eye, left side.
8. Abrasion ' x ' middle of pinna of left ear.
9. Contusion 4' x 3' bluish in colour, left side of chest situated horizontally.
10. Three contusions 3' x 2' each, parallel to each other, left side of back in its middle.
11. Contusion 2' x 1' bluish in colour, left scapular region, situated horizontally.
12. Contusion 4' x 3' left buttock, bluish in colour and situated horizontally.
18. Contusion 2' x 1' upper part of front of left thigh situated horizontally and bluish in colour.
14. Contusion 8' x 2' bluish in colour, right buttock, situated horizontally.
15. Abraded contusion 1' x ' and 1' x 1' left shoulder, bluish in colour, situated vertically.
16. Lacerated wound 1' x ' chest cavity deep, right side of upper part of chest situated horizontally.
17. Lacerated wound 1' x 1' x bone deep-upper one third of front of left leg with fracture of both the bones beneath, situated horizontally.
18. Lacerated wound ' x ' bone deep, two inches below injury No. 17, situated horizontally.
19. Contusion 1' x ' dorzal aspect of left wrist, bluish in colour, and situated horizontally.;
20. Contusion 1' x ' bluish in colour, middle of front of left leg situated horizontally.

7. The internal examination further revealed the membranes and brain congested. Walls, ribs and cartilages were lacerated below injury No. 16 with fracture of 5th and 6th ribs which had penetrated the lung and there was clotted blood. Pleura was lacerated below injury No. 16 and the cavity contained one pint of blood. Larynx, trachea and bronchi were congested. Right lung was lacerated by broken 5th and 6th ribs and covered with clotted blood. Left lung was congested. Both chambers of heart were empty. Esophagus was congested and the stomach empty. Small intestines contained some feces and the large intestines were full of feces. Gall bladder was congested and empty. Spleen and kidneys were congested. Bladder was full of urine. In the opinion of the doctor, death was due to shock and hemorrhage from the multiple injuries particularly to the right lung by some blunt object, vide Exs. Ka-4 and Ka-23.

8. The Investigating Officer had found the cart with the dead body of Ram Saran standing in front of Rajendra Prasad's house. There was a quilt spread under the dead body and it was blood stained. He took a portion of that stained quilt Ex. 5 in his possession under the memo. Ex. Ka-14. Under the thatch situate in front of that house, blood was found at two places. From there he collected plain and blood stained earth, Exs. 6 and 7 under the memo. Ex. Ka-13. He also recovered the lantern Ex. 8 from the thatch of Rajendra Prasad's house under the memo. Ex. Ka-15. He examined the torches of Rameshwar Dayal Sabhapati and Chandrika and found them in working order. Memo. Ex. Ka-8 was prepared. Smt. Shanti Devi also delivered certain documents Exs. Ka-5A, Ka-6A, Ka-7A and 9 relating to the enmity between Baahiruddin and Earn Saran deceased. Memo. Ex. Ka-20 was prepared. Thereafter, the Investigating Officer inspected the locality and prepared site plan Ex. Ka-21 (avowing the place of occurrence with the latter E. and from where blood stained earth was collected). The appellants could not be arrested, and they actually surrendered in Court on 14th April, 1907. The blood stained articles were absent to the Chemical Examiner. The aerologist found human blood on the piece of quilt Ex. 5 and the stained earth collected from the scene of occurrence, vide Exs. Ka-24 and Ka-25. After completing the investigation, the charge sheet was submitted on 14th May 1907.

9. The accused pleaded not guilty and denied the charges. Rajendra Prasad admitted that Bishiruddin appellant was his friend. He pleaded alibi and contended that he was at Gola on the day of the incident. He attributed his false prosecution to old enmity with Rameshwar Dayal Sabhapati, Raja Bam and Gulzari Lal P.Ws. It was further pleaded that the witnesses were under the influence of the Sabhapati. He could not say if blood was found under the thatch of his home.

10. Bashiruddin denied his friendship with Rajendra Prasad appellant and enmity with Ram Saran deceased. He also attributed his false prosecution to enmity with Remeshwar Dayal and other P.Ws.

11. In support of the prosecution case, 15 witnesses including Shanti Devi P.W. 6, Rameshwar Dayal P.W. 7, Raja Ram P.W. 10, Gulzari Lal P.W. 11, Prem Ram P.W. 12 and Laloo P.W. 13 (who were the eye-witnesses), were examined. The accused did not produced defence.

12. The Sessions Judge in convicting the appellants mainly relied on the dying declaration made by Ram Saran, and the evidence of the eyewitness. Now, we have to see from the materials on the record, if the charge has been satisfactorily brought home to the appellants and they have been rightly convicted.

13. There was no serious dispute that Ram Saran died of the injuries sustained by him, and he did not die a natural death. This fact was further proved by the medical evidence on the record. The correctness of the date, time and place of the incident was also never specifically challenged. The material question for consideration was whether the appellants really attacked Ram Saran in the manner alleged by the prosecution. The admitted facts were that Bam Saran, his young daughter-in-law Shanti Devi who will a widow, and his grandson were living in the village. Rajendra Prasad appellant was there close neighbour. He also had friendly relations with Bashiruddin. There was evidence on the record to show that the relations of Bashiruddin with Ram Saran were not quite cordial. Daring April July, 1958, some complaints were made by Rim Saran against Bashiruddin and other members of his family, vide Exts. Ka-5A, Ka-6A, Ka-7A and 9. There was also evidence that the appellants used to misbehave with Shanti Devi. daughter-in-law of the deceased, and whenever it came to his notice, he reprimanded them.

Even on 7th April, 1957, Ram Saran found the appellants near the door of his house cutting filthy jokes in the presence of Bhanti Devi. In that connection, he reprimanded them and hot words exchanged. The same night the murderous assault was made on Ram Saran.

It was contended on behalf of the appellants that the motive alleged by the prosecution for the crime was quite inadequate. It is well settled that where the positive evidence against the accused is clear, cogent and reliable, the question of motive has no importance: See AIR 1953 S.C. 460 Guroharan Singh v. State of Punjab. In another case reported in AIR 1966 80 1822 Rajindar Kumar v. State of Punjab it was held:

The motive behind a crime (in this case one punishable under Section 302, Penal Code) is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assessing the evidence. The circumstances which prove the guilt of the accused are, however, not weakened at all by the fact that the motive has not been established. It often happens that only the culprit himself knows what impelled him to a certain course of action.

14. So, even the motive in the instant case for committing the crime was inadequate, that by itself would not be sufficient to condemn the prosecution case outright.

15-16. The direct evidence in the case consists of the statements of Shanti Devi P.W. 6, Rameshwar Dayal P.W. 7, Raja Ram P.W. 10, Gulzari Lal P.W. 11, Prem Ram P.W. 12 and Lalloo P.W. 13.

When these witnesses reached the scene of occurrence on hearing the noise, Ram Saran deceased narrated them the entire incident, and they also saw the actual assault. It has to be seen if that evidence was cogent and reliable and sufficient to establish the guilt of the appellants. (After discussing the prosecution evidence, the judgment proceeded.)

17. We feel convinced that the guilt of the appellants has been established by reliable and unimpeachable evidence.

18. It was fully established that the crime was committed under the thatch of Rajendra Prasad and the earth collected from the ground under the thatch was also found by the serologist gained with human blood, It was contended on behalf of the appellants that the story that Rim Satan was taken away from his thatch to that of Rajendra Prasad was highly unnatural. We however, do not agree with that submission. Nobody know how the minds of the culprits were working at the time they committed the crime. If Earn Saran had survived the injurious the appellants might have taken the plea that he really raided the house of Rajendra Prasad, committed criminal trespass and was the aggressor. 80. this contention of the appellants has no substance.

19. It was next urged that there was unreasonable delay in the lodging of the report and that circumstance indicated that the incident was actually discovered sometime in the morning. In that connection, reliance was also placed on the circumstance that though the murderous assault was made at about midnight, Ram Saran was not removed to his house or to the hospital promptly. This contention too has little substance. Smt. Shanti Devi was a young widow. There was no adult male member in the family. She naturally depended on the help and advice of others. In spite of best efforts, bullock-cart could sot be arranged in the night, nor anybody agreed to go and call the chaukidar. Message was sent to the chaukidar in the morning, and as goon as he arrived, arrangements were made for taking Ram Saran to the thana. It is possible that Shanti Devi and the witnesses could not anticipate that the injuries received by him (Ram Saran), were really serious. The gravity was realized only when Bam Saran was put on the act, and soon after it moved, he expired. This must have naturally caused a tremendous shock to the young widow, and she would have taken sometime to compose herself. Thereafter, she dictated the report; to Raja Ram V.W. and sent it through4the chaukidar. The thana was about six miles from there. The report was lodged at about 9.30 A.M. In the circumstances, we agree with the Sessions Judge that the delay, if any, in making the report had been satisfactorily explained.

20. Lastly, it was contended that the appellants could not be attributed the intention to kill Ram Saran. It was further prayed that lesser penalty provided under law may be awarded. The proved facts are that the appellants who are

young men (Aged about 27 each) combined in assaulting Ram Saran. an old man of 60, with dandas. They showered numerous blows on different parts of the body. The doctor found 20 visible injuries of various dimensions. Injury No. 10 comprised of three contusions. There were a even lacerated wounds. The rest were contusions and abrasions. Injury No. 16 was on the chest. The fifth and the sixth ribs had been fractured and they had penetrated into the right lung. Both the bones of one of the legs had been fractured. According to the doctor, the death wad due to shook and hemorrhage as a result of the injuries. He further stated that injury No. 16 alone was sufficient in the ordinary course of nature to cause death. It follows that the death had been caused due to the cumulative effect of the injuries. In the circumstances, it was difficult to hold, that the intention of the assailants was simply to cause grievous hurt and not death.

In a similar case reported in AIR 1966 SC 143, *Anda v. State of Rajasthan*, it was held:

In a trial for an offence of murder under clause thirdly of Section 300 read with Section 84, Penal Code, it is always a question of fact whether the accused shared a particular knowledge or' intent. One has to look for a common Intention, that is to say, some prior concert and what that common intention is. That there should be an appreciable passage time between the formation of the intent and the act is not necessary for common intention may be formed at any time. Then one must look for the requisite ingredient that the injuries which were intended to be caused were efficient to cause death in the ordinary course of nature. Next, one must see if the accused possessed the knowledge that the injuries they were intending to cause were sufficient in the ordinary course of nature to cause death. When all these circumstances are established and death was in fact caused by were injuries which were intended to be caused and which sufficient is the ordinary course of nature to cause death, the resulting offence of each participant would be murder.

Where several accused beat the victim inside a house after dragging him there and the number of injuries showed that all took part in the beating, his arms and legs were smashed and there were, many bruises and lacerated wounds on his

person and the injuries intended to be caused were sufficient in the ordinary course of nature to cause death, the assault was murderous and it must have been apparent to all the assailants that the injuries they were inflicting in furtherance of the common intention of all were sufficient in the ordinary course of nature to cause death. Under these circumstances, the offence must be held to be murder within clause thirdly of Section 300 read with Section 34, Penal Code.

21. From the nature and number of injuries caused on various parts of the body and the weapon used, it would be reasonable to hold that the appellants really intended to cause all those injuries, and had the requisite knowledge that their act was imminently dangerous and could result in the death of the victim. So, on the proved facts, the offence made out was of murder.

22. There are no mitigating circumstances in the case. Ram Saran was first disabled by fracturing his leg, and then serious injuries were caused on vital parts of the body. The murder was cold-blooded and calculated. We see no reason to exercise clemency by imposing the lesser sentence. The sentence awarded by the Sessions Judge is well deserved, and needs no interference.

23. No other point was pressed.

24. The appeal has no merit, and must fail Accordingly, the appeal is dismissed and the conviction and sentences of Rajendra Prasad and Basbiruddin under Section 302 read with Section 84, Penal Code, are maintained. The reference made by the, Sessions Judge is accepted. The sentences shall be carried out according to law.