

Rajpal and ors. Vs. the State

Rajpal and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/473072

Court : Allahabad

Decided On : Oct-07-1988

Reported in : 1990CriLJ501

Judge : V.P. Mathur and ;M.M. Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 149, 302, 304, 307, 324 and 452

Appeal No. : Criminal Appeal No. 1263 of 1978

Appellant : Rajpal and ors.

Respondent : The State

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : A.B.L. Gaur, Adv.

Judgement :

V.P. Mathur, J.

1. This appeal is directed against the judgment and order dated 22-4-1978 passed in Sessions Trial No. 372 of 1977 by Mr. Rati Ram Jatav, the then III Additional Sessions Judge of Etah, whereby he has convicted the six appellants mentioned above on a charge under Section 147 and 302/149, I.P.C. and sentenced each

one of them to one year's rigorous imprisonment on the first count and to imprisonment for life on the second.

2. The occurrence in question took place on 6-2-1977 at about sunset in village Jinavali to which the appellant as well as the deceased Gangaram and his brother Ospal (P.W. 1) belonged. The first information report was lodged at 7.45 p.m. the same day at police station Awagarh, Etah, at a distance of three miles from the place of occurrence.

Brijlal Mandlal alias| |_____ Nandram| |Shobharam Narain
Chhangulal| | |_____ | _____| | | | |
| Gangaram Ospal | Nardayal Hira Sukhbasi(deceased) (P.W.1)| (appellant-4)
(appellant-5) (appellant-6)
6)_____ | | |Rajpal Babu
Rajbir (appellant-1) (appellant-2) (appellant-3)

The above pedigree has been elicited during the statement of P.W. 1, Ospal and is not disputed by any of the parties. It will thus be clear that deceased Gangaram and Ospal (P.W. 1) who were real brothers were the first cousins of accused persons Rajpal, Babu and Rajbir and second cousins of Sukhbasi, Hira and Hardayal. The evidence is that they had a common ancestral house in which they had separate portions. They were all residents of village Jinavali which lies within the area of police station, Awagarh, district Etah.

3. It is not disputed again that on the question of a wall there was some sort of marpit between Gangaram on the one hand and Sukhbasi Hardayal and Hira -- three of the present appellants and one other person (Rakshpal) on the other. Gangaram had received an injury from a GANDASI in that fight and had lodged a report under Sections 324 and 452 of the Penal code. This happened on 5-2-1977 i.e. one day before the occurrence. On the basis of the report, a case was registered against Sukhbasi, Hardayal, Hira and Rakshpal, vide, G. D. entry Ext. Ka-6. It is also in evidence that in connection with the investigation of that case, a sub-inspector from the Thana had come to the village at about 5 p.m. on 6-2-77 and after making some investigation had already left the village, when at about sunset this occurrence took place. It may also be mentioned here that sun-set on

6-2-1977 in Allahabad was at 17.50 hours. The prosecution case is that near about sun-set one Thakur Ramvir Singh of the village came to the house of Gangaram and called him and his brother Ospal. When these brothers came out, the Thakur told them that they were required to be present at the house of Udaipal where one Gajandra Singh of Bathua had come to arrange compromise between Gangaram and the accused appellants, Gangaram entered into talks with Thakur Ramvir Singh and in that way he moved a few steps till both of them came to the Kharanja just in front of the chhappar of Kunwarpal Ospal and Gangaram's wife Smt. Patra were also accompanying Gangaram, Gangaram ultimately told Thakur Ramvir Singh that a compromise could not be made without intervention of the Daroga, because he had already lodged a report and the Daroga had come to the village to make an investigation. Upon this the Thakur told him that he will have to enter into a compromise otherwise he will be ruined. Suddenly from out of the chhappar of Kunwarpal, the six appellants of this case all armed with lathis emerged. One of them Babu exhorted the others to kill Gangaram and Ospal and all of them fell upon Gangaram and started giving him a beating with their lathis. Smt. Patra was standing at some distance. Ospal ran away from the spot and cried for help. Witnesses collected including Udaivir (P. W. 3), Mahesh Chand (P.W. 4) and others and at their intervention, the appellants ran away from the spot. Ospal arranged to bring the injured to his house. He could not make any arrangement for the transport of the injured to the thana. He, therefore, himself covered the distance of three miles on foot and reached police station Awagarh, where he lodged the first information report at 7.45 p.m.

4. The police came into motion almost at once and the Investigating Officer reached the village. He found Gangaram lying badly injured and therefore, arranged to send him to the District Hospital at Etah. He was first taken to the P.H.C. Awagrah where the doctor saw him and immediately advised him to go to Etah and did not himself give him any treatment. In the District Hospital at Etah Dr. S. Prasad (P.W. 7) examined the injuries of Gangaram the same night (7-2-77) at 1.10 a.m. He found : (1) A lacerated wound 6.5 cm. X 0.5 cm. X muscle-bone deep on the right side of the head obliquely placed 8 cms. above the right eye brow. Blood was oozing.

(2) Contused swelling 12 cms. X 3.5 cms. on the right side of the forehead covering the eye and the cheek in such a manner that the right eye had closed and could not be opened without difficulty.

(3) Contused swelling 5 cms. X 4.5 cms. on the right collar bone along with a lacerated wound 2 cm. X 0.3 cm. X skin deep over it in its middle.

(4) Abrasion 1.5 cm. X 1.5 cm. on the front surface of the left knee.

5. The injured was admitted in the hospital Injuries Nos. 1 to 3 were kept under the observation. Injury No. 4 was found to be simple and caused by some friction. The remaining three injuries were caused by some blunt weapon like lathis and they were about a quarter day old. The injury report is Ext. Ka 7.

6. In the same night at 1.32 a.m. it appears that Gangaram died and on 7-2-1977 at 2 p.m. The post-mortem examination on the dead body of the deceased was conducted, by Dr. S. Prasad, Superintendent, District Hospital, Etah. The doctor found the same four injuries on his body which he had earlier found at the time of the examination during life. The internal examination, however, revealed the scalp deeply congested under the surface. There was depressed fracture on the right side of the front parietal bone in an area of 8 cms. X 5.0 cms. Membranes were lacerated on the right side top and congested. Brain was lacerated and congested on the right side top of the vertebrae at multiple places in an area of 6 cms. X 4.5 cm. There was fracture on the base of the skull, of the anterior cranial fossa and the middle cranial fossa. In the opinion of the doctor, the death was due to coma as a result of the head injury which was sufficient in the ordinary course of nature to cause death.

7. In the beginning, the case was registered under Section 307, I.P.C. Information was communicated on 7-2-1977 to the Thana where the case was altered to one under Section 302, I.P.C.

8. The prosecution has examined in this case four eye-witnesses namely Ospal first informant (P.W. 1), who was accompanying Gangaram at the time of this occurrence, Smt. Patra wife of Gangaram (P.W. 2) who was also accompanying

the deceased at some distance from him. P.W. 3 Udaivir and P.W. 4 Mahesh Chand, who saw the occurrence and intervened. Besides them, the doctor, the Investigating Officer and the Police Head Constable have been examined as formal witnesses.

9. There is no dispute as regards the fact that one day earlier, there had been a marpit between Gangaram on the one hand and Sukhbasi, Hardayal and Heera -- the three of the appellants on the other, and as a result of this marpit Gangaram had sustained injuries and had lodged a report Ext. Ka-6. There is no dispute again as regards the facts that in connection with the investigation of that case, a sub-inspector of police had come to the village and was there at about 5 p.m. and had then left the village for the Thana. Undoubtedly, so far as the branch of Narayan comprising of appellants Rajpal, Babu and Rajvir is concerned, there was no enmity between them on the one hand and Gangaram and Ospal on the other. They had not taken part in the marpit, which had taken place a day earlier. Only the three sons of Chhange namely the appellants Hardayal, Hira and Sukhhasi along with another person Rakshpal were responsible for causing injuries to Gangaram on 5-2-1977. The accused appellants in the present case however contend that they have been falsely implicated and they were not responsible for causing injuries to Gangaram in the evening of 6-2-1977 nor responsible for his death. A suggestion was given on their behalf that Gangaram's wife Patra was having illicit relationship with gangaram's brother Ospal (P.W. 1) and they were responsible for the murder of Gangaram and in order to save their skin, they have falsely implicated the accused appellants on a cooked up charge. No evidence in defence has been adduced.

10. In the statement of P.W. 1 Ospal which was recorded in the Court on 24-2-1978, it was elicited from him that after demise of Gangaram the parents of Smt. Patra are insisting that he should adopt her as his wife and that Smt. Patra is also keen for it, but Ospal has still not decided about the matter. He however admitted that Smt. Patra was pregnant at the time of his statement and that it may be his child that she is carrying. This only shows that about one year after the occurrence Ospal and Smt. Patra had sexual relations because the parents of Smt. Patra wanted him to accept her as his wife. The parties are dhobis by caste and it is not

disputed that amongst dhobis widow's remarriage takes place and since Smt. Patra is a young lady, it is not unnatural that her parents might be desirous of seeing that Ospal married her. But this is no reason to believe that even during the lifetime of Gangaram there was illicit relationship between Ospal and Smt. Patra. Even if there was such relationship, it does not necessarily mean that Ospal and Smt. Patra would plan for the murder of Gangaram and will execute it. In support of such a suggestion given by the learned counsel to the witness, there is no evidence whatsoever. On the contrary the two witnesses Udaivir and Maheshchand who have not supported the prosecution version in whole, clearly make out one thing that the occurrence took place on the Kharanja just close to the chhappar of Kunwarpal and not very far away, from the house of the deceased Gangaram, and that Rajpal, Babu, Sukhbasi and Hardayal at least were present in this marpit, according to P.W. 3 Udaivir. It may however be mentioned here that Udaivir and Mahesh Chand say that this occurrence had taken place after it had become dark and Maheshchand simply says that he saw Gangaram lying badly injured and then he was removed to his house by Ospal and Smt. Patra. His statement, therefore, is of no avail at all. Udaivir, however, says that it all happened when it was dark and he saw a marpit going on amongst dhobis. He clearly saw Rajpal, Sukhbasi. Hardayal, Babu and Gangaram (deceased) involved in this marpit. There were some other persons but their names he could not know. One of the appellants was armed with a lathi. It appears that this witness tried to support two of the appellants namely Hira and Rajvir by not naming them and also tried to support the defence by saying that the occurrence took place when it was dark. Without the permission of the Court, the witness was cross-examined by the prosecution and a joint affidavit filed by him earlier with Mahesh Chand vide, Ext. Ka 3 was put to him and to Mahesh Chand. Both the witnesses admit their signatures and also giving of this affidavit in the Court but denied its contents. Whatever may be the position, these two witnesses Udaivir and Mahesh Chand are wavering witnesses and are hostile to the prosecution and their testimony cannot be accepted except in that part in which it finds corroboration from the other witnesses.

10-A. Ospal and Smt. Patra are very closely related to the deceased. The first is the real brother of the deceased and the second is his wife. It should also not be

forgotten that they are also very closely related to the appellants who all belong to the same family. Therefore, there is no reason for false implication. A day earlier Hardayal, Hira and Sukhbasi had caused injuries to Gangaram. Admittedly there was no enmity between Gangaram on the one hand and Rajpal, Babu, and Rajvir on the other and therefore, it will be too much to think that they could have been falsely implicated for no reason whatsoever, unless they had joined hands with Hardayal, Hira and Sukhbasi in assaulting Gangaram. The testimony of Ospal and Smt. Patra finds complete corroboration from the first information report and the circumstances of the case. These two witnesses have been thoroughly cross-examined and have not been shaken in their statements. They recite the incident which took place a day earlier and then they say how and in what manner the present occurrence took place, when at the call of Thakur Ramvir Singh the deceased Gangaram entered into a talk with him and moved a few steps from his Darwaza and came on the Kharanja.

11. We have very carefully gone through the evidence of these two witnesses. We have also considered the statement of P.W. 3 Udaivir which at least finds corroboration to this extent that there was a fight going on between the dhobis including Rajpal, Sukhbasi, Hardayal and Babu on the one hand and Gangaram on the other, who was being beaten by them. The presence of at least one lathi is also spoken to by Udaivir. He claims to have challenged the appellants as to why they were continuing to beat Gangaram, as there was every likelihood of his death, the first information report in this case cannot be said to be delayed. There was sufficient motive for the commission of this occurrence, at least so far as Hardayal, Hira and Sukhbasi are concerned : why the three other appellants joined them, is not clear. How the mind of an accused works and what prompts him to commit the offence cannot sometimes be even a subject of imagination or guess work. Injuries were sustained by Gangaram not when it was dark but some time before the sunset when there would be sufficient light on the spot. The assailants were all known persons and close relatives. Under these circumstances it could not be a case of mistaken identity at all. It has been argued that there is a mention of other witnesses having seen this occurrence and they have not been examined. In this respect there is sworn testimony of Ospal that the Thakurs of the village are helping the appellants and had influenced the other witnesses. That appears to be

the reason why Udaivir and Mahesh Chand are not whole heartedly supporting the prosecution case now. The time and place of occurrence are clearly established and we are in agreement with the learned Sessions Judge, that the six appellants of this case did assault Gangaram with lathis and caused him severe injuries, as a result of which he died in the hospital. Their guilt, therefore, stands established.

12. We have only to see as to under what sections of the Penal Code, these persons will be liable to punishment, they all came together armed with lathis and started the assault. They all remained on the spot all through till some village people intervened and saved the further assault and then they all left together, they have thus been guilty of the offence under Section 147, I.P.C. Their conviction on that charge, therefore, is perfectly justified and has to be upheld along with the sentence of imprisonment for one year awarded by the learned Sessions Judge.

13. In order to come to a conclusion whether they would also be guilty of the offence under Section 302/149, I.P.C. we have to see as to with what intention they started the marpit. The evidence on the record as well as the first information report go to show that the original intention of the accused appellants was to somehow force Gangaram to enter into compromise with respect to the incident which had taken place on 5-2-1977 between him and three of the appellants. With that view one Thakur Gajendra Singh of village Bathuwa had come to the house of Udaipal and sent Thakur Ramvir Singh to fetch Gangaram and Ospal so that a compromise may be arranged. It shows that the intention of the appellants was not to commit the murder of Gangaram right up from the beginning. Only when Gangaram ultimately told that a compromise without the permission of the police could not be arrived at, because the police had already taken cognizance of the earlier occurrence, did it come to the mind of the accused appellants that there was no purpose in trying to convince Gangaram except by use of force. It was in this manner that they started the assault on Gangaram. It may also be mentioned here that only four injuries were sustained by Gangaram in this assault, while six persons allegedly gave him a beating with lathis. It means, therefore, that at least two blows from the lathis of two of the appellants did not hit. Gangaram and went astray. Then again so far as Rajpal, Babu and Rajvir are concerned, there was no

previous enmity. They simply joined Sukhbasi, Hardayal and Heera at the spur of the moment for what reason, it is not clear. Two injuries were sustained by the deceased on his head. They of course resulted in his death and were sufficient in the ordinary course of nature to cause his death. But if the intention of the appellants had been to kill him, they would have persisted in giving him blows after blows on his head and other vital parts of his body, which has not happened in this case. Under these circumstances, we are of the opinion that it is not a case to be covered by the Section 302, I.P.C. but one to be covered under Section 304, Part II, I.P.C. all the appellants will be deemed to have had the knowledge that the injuries that they were causing could result in death.

14. Under these circumstances, while we will uphold the conviction and sentence of the appellants under Section 147, I.P.C. as returned by the learned Additional Sessions Judge, we will alter the conviction under Section 302/149, I.P.C. to one under Section 304, Part II read with Section 149, I.P.C. and also the sentence of imprisonment for life to one of rigorous imprisonment for five years in the case of the appellants.

15. In the result, the appeal is partly allowed. The conviction of the appellants under Section 302/149, I.P.C. is altered to one under Section 304, Part II read with Section 149 of the Indian Penal Code and on this charge, each one of the appellants is awarded rigorous imprisonment for a term of five years. Their conviction under Section 147, I.P.C. and the sentence of one year's rigorous imprisonment as directed by the learned Additional Sessions Judge is upheld. These two sentences of imprisonment shall be concurrent.

16. The appellants are on bail. They shall surrender and be taken into custody forthwith to serve out their sentences and their bail bonds and sureties shall be cancelled.