

Ramesh and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-19-1991

Reported in : 1991CriLJ2976

Judge : H.C. Mital and ;K. Narayan, JJ.

Acts : Arms Act - Sections 25; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; Uttar Pradesh Zamindari Abolition and Land Reforms Act - Sections 122; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 10 of 1979

Appellant : Ramesh and ors.

Respondent : State of U.P.

Advocate for Def. : D.G.A., ;S.N. Mulla and ;A.N. Mulla, Advs.

Advocate for Pet/Ap. : G.S. Chaturvedi, ;R.P. Singh and ;Keshav Sahai, Advs.

Disposition : Appeal allowed

Judgement :

H.C. Mital, J.

1. Ramesh, Ram Gopal and Ravi Shanker have preferred this appeal against the judgment dated 23-12-1978 passed by Sri B.B.S. Chaudhary, the then Xth

Additional Sessions Judge, Kanpur Dehat, convicting appellant Ramesh Under Section 302, IPC simpliciter and the remaining two Ram Gopal and Ravi Shanker Under Section 302 read with Section 34, IPC and sentencing all the three appellants to life imprisonment.

2. The facts of the case, in brief, are that there was a water channel, going through the fields of appellant Ravi Shanker and Ramesh. Ramesh is son of Ram Gopal. They closed the water channel. The deceased Sardar Singh along with Kali Charan and Siduhoo Singh were digging it in the evening prior to the occurrence. The appellant Ramesh and Ravi Shanker reached there and intervened and got it stopped and left saying that they would teach them a lesson. On 21st October, 1976 at about 8-30 a.m. the deceased Sardar Singh and Raja Singh were called at the Chabutra of Bhagwan Lodh by Ram Gopal to get the dispute settled. While Ram Gopal and the two deceased Sardar Singh and Raja Singh were talking, appellants Ramesh armed with the gun of his father Ram Gopal, Ravi Shanker armed with a Tabal and Raja Ram armed with a pharsa reached there and threatened that if any one would again dig the water drain, they would kill him. Thereupon a wrangle ensued between the accused-appellants Ramesh and Ravi Shanker one hand and the deceased Raja Singh and Sardar Singh on the other. At that moment Ramesh fired a shot with his gun at Raja Singh and Ravi Shanker and Raja Ram attacked Sardar Singh with the Tabal and Pharsa and thereafter the accused made good their escape. Both the injured died on the spot. An FIR of the occurrence was lodged at police station Gajner at a distance of five miles by P.W. 1 Nawab Singh narrating the above incident. In the FIR in column No. 2 regarding the names of the accused the name of appellant Ram Gopal was not entered.

3. The investigation of the case was entrusted to P.W. 8 S.I. Ranvir Singh Solanki, who reached the scene of occurrence, prepared the inquest report of the dead bodies and then sent them for post mortem examination and after completion of the investigation submitted the charge sheet against Ramesh, Ram Gopal, Ravi Shanker and Raja Ram Under Section 302/34, IPC.

4. At the trial the prosecution examined 8 witnesses of whom P.W. 1 Nawab Singh, P.W. 2 Badlu Singh, P.W. 3 Bharat Singh and P.W. 7 Ram Gulam are the eye witnesses of the occurrence and they corroborated the prosecution story stated above. P.W. 4 Shripal Singh was Head Moharrir at the relevant time. He proved the first information report and registered the case in general diary and made other relevant entries. P.W. 5 Dr. G. C. Gupta had done the autopsy on the two dead bodies on 22nd October, 1976 from 1-30 p.m. to 4 p.m. The deceased had received the following injuries :--

Ante mortem injuries of Sardar Singh vide post mortem report Ext. Ka-6.

1. Incised wound 4 1/2' x 1' bone deep on the right side of the neck behind the right ear obliquely cutting the angle of the mandible bone, caroted vessels on the right side and the body of the 5th vertebra on the right side margins clean cut and everted.

2. Incised wound 2' x 1/10' x whole thickness of the right pinna of the ear cutting the lower part completely clean cut edges.

3. Incised wound 3 1/2' x 1/2' bone deep on the back of the chest upper part obliquely near and middle line, cutting the third and fourth ribs on the right side disternly.

5. On internal examination there was clean cut on the 5th cervical vertebra, 4th and 5th ribs on the right side and right angle of the mandible cutting the caroted artery. Stomach contained 12 Oz of Semi digested food. Small intestines were full of faecal matter and gases.

Ante mortem injuries of Raja Singh, vide postmortem report Ext. Ka-7.

1. Gun shot injury 4' x 2' x cranial cavity deep on the front of the fore-head Rt. side from Rt. eye to the forehead upper Rt. side. Edges inverted, blackening and charring present. Direction back-wards to the right. Brain matter peeping out from the wound.

6. On internal examination there was a fracture of the frontal parietal, temporal and occipetal bones on the right side. Membrane and brain were badly lacerated. Two pellets were recovered from the brain. Stomach contained 80z fluid material Small intestines were full of faecal matter and gases.

7. P.W. 6 S.I. Ram Swarup Singh is a formal witness and he had executed the warrants regarding attachment of the property etc. when the accused Raja Ram and Ravi Shanker were absconding. P.W. 8 S.I. Ranvir Singh Solanki deposed about the various steps taken by him during the course of investigation.

8. On the other hand, the defence version of the accused Ramesh has been that two days prior to the occurrence Nawab Singh and Sardar Singh were digging drain in his field of paddy. On finding that his crop was being damaged, he stopped them and then both of them had left. On the date of incident at about 9 a.m. when he again went to see his crop he found that Raja Singh and Sardar Singh were digging the drain. On his remonstrations why they were again digging the drain, Raja Singh attacked him with a Lathi. That he himself was empty hands. Gun of Sardar Singh was lying there. Raja Ram then exhorted Sardar Singh to shoot him to finish the dispute for ever and when Sardar Singh attempted to shoot him he caught his gun and struggled and during that struggle the gun got fired. That he himself had received several lathi injuries and had fallen down unconscious. He subsequently found himself at his house. After some time his father arrived there from Kanpur with his gun and sometimes thereafter the Investigating Officer arrived there and arrested him and carried his father's gun to the Police Station. In defence, he examined D.W. 1 Harbilas Tewari, Block Organiser, who deposed that in his presence the quarrel had taken place on 10-9-76 when he had gone to get the drain dug up. At that time Nawab Singh objected and then a quarrel took place between Ravi Shanker and Nawab Singh, hence he stopped the work. Subsequently he again went on 14-9-76 with the police force and got the drain dug.

9. D.W. 2 Jai Narain stated that Ram Gopal was living in Kanpur for the last 10-12 years; that he used to keep his gun at Kanpur; that there was a separate drain through which the field of Raja Singh was irrigated; that on that day at about 10

a.m. when he was putting his cart in order he came to know that . Ramesh had been injured and that he was lying in his paddy field near the drain. He then went there and carried him to his house.

10. Lastly, D.W. 3 Dr. Kishan Lal Shah was the Medical Officer in the District Jail, Kanpur. He had examined Ramesh in the District Jail on 22-10-76 at 9-40 p.m. and noted the following injuries on his person vide injury report Ext. Kha-7 :--

Injuries of Ramesh vide Ext. Ka-7.

1. Contusion 3 cm x 2 cm on left ear pinna of upper part.
2. Abraded contusion on the back of right ear in an area of 1 cm x 1/2 cm.
3. Abraded contusion 6 cm x 1 cm on front lateral side of right side neck of its base.
4. Contusion 6 cm x 1.5 cm on the left side neck middle 1/3 region.
5. Contusion multiple 12 cm x 3 cm on front medial aspect of right upper arm.
6. Contusion 3 cm x 1.5 cm in front of right elbow.
7. Contusion 2.5 cm x 1.5 cm on medial aspect of right elbow.
8. Abraded contusions 3 cm x 1 cm on the back of right hand on the base of middle and index finger.
9. Abrasions 1/2 cm x 1/2 cm at dorsal side of right index finger.
10. Traumatic swelling at right dorsem of hand (u.o.).
11. Traumatic swelling at whole of left dorsum of hand.
12. Contusions 3 cm x 1.5 cm on the dorsum of left hand.
13. Contusions 4 cm x 1.5 cm on the dorsum of left hand.
14. Contusion 2 cm x 1 cm on posterior side of left thigh middle 1/3.

15. Complain of pain in whole of chest (u.o.).

11. In his opinion all the injuries could be caused on 21-10-1976 at about 10 in the morning. He proved the injury report Ext. Kha-7.

12. The learned Sessions Judge believed the prosecution case and disbelieved the defence version and hence convicted and sentenced all the three appellants as stated above. Raja Ram died during the trial. On being aggrieved this appeal has been preferred and on behalf of the appellants the learned counsel argued that the prosecution case was highly suspicious; that Ramesh received 14 injuries at the scene of occurrence which have not been explained by the prosecution and that from the totality of the circumstances it is clear that the prosecution has failed to bring home guilt to the appellants beyond reasonable doubt.

13. The main question for decision is, whether the injuries received by Ramesh have been duly explained by the prosecution. The prosecution has tried to explain the injuries of Ramesh alleging that the same were received at the time of his arrest when he had put up resistance. The prosecution however, did not file a copy of the entry of his injuries in the G.D. On the other hand, the defence got the same proved through P.W. 4 S.I. Shripal Singh who was Head Moharrir on 21st Oct. 1976 at police station Gajner and in his cross-examination he admitted that Ramesh was brought to the police station under arrest by the Station Officer Ram Swamp Singh Bhadoriya on 21-10-76 at 7-30 p.m. and a case Under Section 25 of the Arms Act was registered against him. At that time his injuries were also noted and he proved Ext. Kha-1, copy of the entry in the G.D. The injuries mentioned are 'Chot dono Hathon me, Panjo me, Chot Kharas' i.e. only abrasions were noted on both the hands and feet of Ramesh. However, by Dr. Kishan Lal Shah D. W. 3 of the District Jail Kanpur on the following day i.e., on 22nd October, 1976 as many as 14 injuries were noted on his person as described in the injury report Ext. Ka-7. Besides the injuries on the hands and feet, injuries on both ears and both sides of neck as well as elbow and thigh were also noted. There is no explanation to those injuries. That apart, though the injuries on hands were there but no injury on the feet of Ramesh was noted by the Doctor except injury No. 14 on the posterior side of left thigh middle $\frac{1}{3}$, which cannot be said to be on the feet. According to Dr. K.

L. Shah D.W. 3, those injuries appeared to have been caused on 21st October, 1976 at about 10 in the morning, i.e. they could be received at the time of the occurrence and were consistent with the defence version. The number and nature of the injuries clearly belies the prosecution case that the same were caused to the accused-appellant Ramesh when he put up resistance at the time of his arrest. The injuries on ears as well as both the sides of the neck clearly indicate that he had been badly assaulted with lathis.

14. That apart, on behalf of the appellant a certified copy of the judgment in the case Under Section 25 of the Arms Act, which was registered against him after his arrest along with the gun, has been shown to us and the same was not disputed that he was acquitted by the Judicial Magistrate on 10-8-83 and in the judgment the arrest of Ramesh along with gun at that time was disbelieved. Admittedly no Govt. Appeal has been preferred. That further belies the prosecution case that Ramesh was arrested along with the gun as alleged by the prosecution and that further belies the prosecution explanation to the injuries received by Ramesh at the time of his arrest at that moment.

15. That apart, no role was assigned to Ram Gopal in the FIR nor in the evidence. It is also not alleged that he had exhorted either of the accused-appellants to attack any one on the complainant's side. In spite of that surprisingly not only charge sheet was submitted against him but he had also been convicted by the learned Sessions Judge simply because he was present at that time and hence it was presumed that he must have also exhorted Ramesh, Ravi Shanker and Raja Ram to kill the deceased. It is also of importance to mention that in the end of his statement P.W. 1 Nawab Singh admitted that on the date of occurrence Ram Gopal was at his own house at about 2 p.m. Had Ram Gopal participated in the occurrence as alleged along with others, he could not be present at his residence and not arrested from there. This part of his statement corroborates the statement of Ramesh appellant Under Section 313, Cr. P.C. that in the afternoon the Investigating Officer had come and before that his father had come from Kanpur with his gun and the Investigating Officer had then arrested him (Ramesh) and had also taken the gun of his father with him while his father was not apprehended at that time.

16. According to P.W. 1 Nawab Singh, Mangi Lal had taken him from his house at about 8 a.m. and then along with him Sardar Singh and Raja Singh he had gone to the Chabutra of Bhagwan Lodh where the incident had taken place. The prosecution neither examined Mangi Lal nor Bhagwan Lodh at whose Chabutra the incident had taken place nor Rameshwar whose house is opposite in the east to the scene of occurrence or any other person of the locality. Instead, all the eye witnesses are highly interested persons. Nawab Singh P.W. 1 is brother of both the deceased Raja Singh and Sardar Singh P.W. 2 Badlu has admitted in his cross-examination that he was Zamindar of Tilochi Village; that Smt. Siddhi Kunwar was his tenant; that Smt. Ganga Dei daughter of Siddhi Kunwar was married to Ram Gopal, father of appellant Ramesh; that he had filed a suit for eviction against Smt. Siddhi Kunwar and that he had lost both in the revenue court as well as Commissioner's court. That apart, P.W. 1 Nawab Singh has admitted that the house of Badlu Singh is at a distance of one furlong from the scene of occurrence. Thus this witness was not only an interested one but there was no reason of his presence at that place. P.W. 3 Bharat Singh though stated that he was at his house which was 15-16 paces away from the scene of occurrence but in his cross-examination he admitted that he was a Truck Driver and lives in Govindnagar. He also admitted that he was resident of village Lakshman Pur which is at a distance of 18 miles. It was alleged that his name was struck off from the voters' list as he was not resident of that village and against it he had preferred an appeal before the Sub Divisional Magistrate, which was also dismissed. He also avoided to answer that his mother had taken loan of Rs. 3000/- from Ram Gopal accused and that for Rs. 500/- a gold Mohar was pawned with Ramesh but admitted that he did not take back his gold Mohar as he had to pay Rs. 900/- and thus he lost his gold Mohar P.W. 7, the other eye witness, Ram Gulam has his house at a distance of three furlongs from the scene of occurrence as this fact has been admitted by P.W. 1 Nawab Singh in his cross-examination himself. Thus he had no obvious reason to be present at the scene of occurrence. He, however, admitted that in the court of Tehsildar there was a case against him Under Section 122 of the U.P. Zamindari Abolition and Land Reforms Act in which he was fined to Rs. 1000/- and that case was got prosecuted by appellant Ravi Shanker and his father Vijai Bahadur, who was Sasha Pati of the Panchayat. Thus all the witnesses

examined in the case were highly interested persons and not having houses near the scene of occurrence when admittedly other persons who were present were not examined.

17. The above circumstances clearly indicate that the prosecution has not come with clean hands and had also failed to establish the origin of the incident as alleged. The origin of the incident appears to be shrouded in mystery in view of the unexplained number of injuries of Ramesh accused-appellant. The conclusion, therefore, is that the evidence on record is not sufficient to bring home the guilt to the appellants beyond reasonable doubt.

18. The appeal is, therefore, allowed. The conviction and sentence of the appellants Under Section 302 read with Section 34, IPC are hereby set aside. They are on bail. They need not surrender and their bail bonds are cancelled and sureties discharged.

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