

Ram Prit Vs. State of U.P.

Ram Prit Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/474317

Court : Allahabad

Decided On : Apr-23-1991

Reported in : 1991CriLJ3069

Judge : P. Basu and ;P.P. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; ;Arms Act - Sections 25 and 25(1); ;Untouchability (Offence) Act, 1955; ;Untouchability Offences Amendment and Misc. Provisions Act, 1976; ;[Protection of Civil Rights Act, 1955](#); ;Scheduled Caste and Scheduled Tribes (Prevention of Atrocity Act), 1989; ;[Constitution of India](#) - Articles 14 to 18

Appeal No. : Criminal Appeal No. 812 of 1979

Appellant : Ram Prit

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : Sidharth Shukla, Adv.

Judgement :

Palok Basu, J.

1. Ram Prit alias Preetam has preferred this appeal against his conviction Under Section 302, I.P.C. and Section 25(1)(a) of the Arms Act and sentence of imprisonment for life and two years' R.I. respectively as passed by VII Additional Sessions Judge, Gorakhpur on 27-2-1979 in Sessions Trial No. 191 of 1978.

2. The charge against the appellant was that on 1-7-77 at about 11, a.m. near the culvert in village Ratanpurwa Tola Kakrahia falling within the limits of police station Campiarganj, district Gorakhpur, along with the other accused Ram Palat (since acquitted) committed murder by intentionally causing death of Girjesh punishable Under Section 302, IPC and further that he was found in illegal possession of a country made pistol punishable Under Section 25(1)(a) of the Arms Act.

3. The instant case is perhaps yet another instance indicating the class oriented thinking in the villages in spite of living in a free country for the last about 40 years. Tussle between high caste and low caste citizens of this country though gradually waning out appears to be a dominant factor in social relations in the villages of eastern U.P. which has taken one more toll of life. One interesting question of availability of the plea of 'grave and sudden provocation' to the appellant on the peculiar facts of this case will be dealt with a little later.

4. Ram Suresh Dubey informant has come out with the case that he was Brahmin by caste while Ram Prit appellant belonging to a low caste and also known as Pritam Chamar who has a medical-shop in the nearby village Gonha was an ill-tempered medical practitioner. Co-accused Ram Palat was a compounder in the said shop. Girjesh, brother of Ram Suresh Dubey had fallen ill necessitating purchase of some medicines by him from Ram Prit for Rs. 5.60. The medicines did not prove efficacious. Ram Suresh Dubey was told by another doctor that higher price was charged from him. On 1-7-1977 the informant was standing at the culvert towards east of his village where Ram Bharose and Saran Kahar were watering their nearby fields. Dr. Ram Prit was coming on a cycle with Ram Palat co-accused sitting on the pillion. Ram Suresh informant said to the appellant that he has given useless medicines doing no good to his brother for higher price and accosted 'How long would this Haram Ki Kamai' (Ill-gotten income) continue? At this, the appellant got down from his cycle and abused the Brahmin community

and said 'I do not call any one'. At this Girjesh asked him not to abuse which resulted in prolonged altercation and ultimately Girjesh said 'His being Chamar is the cause of his ill-temper' and caught hold of co-accused Ram Palat by the neck and pushed him and fell him down. At this Ram Palat co-accused said this Brahmin Sala has lost his mental balance, beat him. At this the appellant took out a country made pistol from inside a bag (Jhola) which was hung on the cycle and fired at his brother Girjesh who fell down there. He wanted to refill the muzzle but the cartridge got stuck up. In the meantime Ram Bharosh, Saran Kahar, Ram Nayan and 2-3 other persons came running and arrested Ram Prit after beating him along with country-made pistol. Two or three persons caught hold of Ram Prit and some were trying to help Girjesh and thus getting an opportunity Ram Prit ran away with the cycle towards south. Girjesh was reportedly having injuries on the chest, throat and face and died soon thereafter. The dead-body was lying there. With a request to have an immediate action, Ram Suresh lodged a First Information Report on 1-7-77 at 13-10 hours at police-station-Campiarganj which was about 11 miles away. Consequently a case was registered Under Section 302, IPC and Section 25 of the Arms Act and after completing the investigation against the appellant and co-accused Ram Palat both accused were charge-sheeted Under Section 302, IPC while a separate charge-sheet Under Section 25(1)(a) of the Arms Act was filed against the appellant.

5. After due committal proceedings the case was committed to the Court of Session and on being convicted and sentenced as aforesaid Ram Prit has filed the present appeal. The learned Trial Judge has, however, acquitted the co-accused Ram Palat.

6. During the trial the prosecution has examined 12 witnesses in all. The appellant had, however, denied the prosecution allegations and had attributed false implication due to enmity. He denied the theory of arrest as propounded by the prosecution and said that he was arrested from his village Gonha after severely beating for no rhyme or reason and that he had for this purpose lodged a FIR in earlier point of time than that of the prosecution. In defence the appellant has produced Sacchidanand D.W. 1, Record-Keeper of police-office, Gorakhpur who proved the general diaries dated 2-8-76, 25-5-77 and 1-6-77 of police station-

Campiarganj in order to prove lodging of some FIRs at the said police station. He also filed certain documents being allegedly carbon copies of some reports lodged at the police station-Campiarganj. They were neither got proved nor were admitted to the prosecution. The learned trial Judge has held that so far as the carbon copies of the FIRs and some postal receipts are concerned they were inadmissible in evidence and were not proved. He also found that the statement of D.W. 1 Sacchidanand does not in any way prove the allegation of the appellant about lodging some FIR before the prosecution's FIR. On the basis of the materials on record the view of the learned trial Judge relating to the statement of D.W. 1 and the so-called reports and postal receipts are appropriate.

7. Post-mortem-examination on the dead-body of Girjesh was conducted on 2-7-1977 at 3-30 p.m. by Dr. A. Khanna P.W. 5, who found the following ante-mortem injuries :

'1.7 Gun shot wound of entry in an area of 5' x 3' in front of the face below nose each measuring 1/4 x 1/4 x muscle deep.

2. 3 Gun-shot wounds of entry in an area of 1' x 1' on the right side of face each measuring 1/4' x 1/4' x muscle deep.

3. One gun-shot wound of entry and exit 1/4' x 1/4' x skin deep in front of tragus of ear.

4.10 Gun shot wounds of entry in front of neck in area of 7' x 7' each measuring 1/4' x 1/4' x muscle & vessels deep.

5. 41 Gun-shot wounds of entry 1/4' x 1/4' x muscle and chest cavity deep in an area of 12' x 9' in front of chest.

6. 12 Gun-shot wounds of entry each measuring 1/4' x 1/4' x muscle deep in front and side of right shoulder to elbow in an area of 9. 1/2' x 5'.

7. 2 Gun-shot wounds of entry in front of left shoulder in an area of 1' x 1' each measuring 1/4' x 1/4' x muscle deep.'

8. It may be noted that all the injuries on the deceased were from the front side and according to the doctor they could be caused by one fire-shot. Right lung had five pellets, left lung had two, lower incisor tooth was broken and in all ten pellets were recovered from the body. The death had taken place 1 1/4 days earlier as a result of shock and haemorrhage from the injuries suffered.

9. P.W. 7 constable Bhagwati Singh was posted in police-station-Campiarganj at the relevant time. He was entrusted with the sealed dead-body of Girjesh and provide its safe custody and its handing over to the doctor for post-mortem examination. He was also a witness about the recovery of the pistol and a cartridge from the appellant Ram Prit as according to him he had gone to the spot along with the Sub-Inspector Hans Nath Misra. P.W. 8 Kaushal Misra Head constable proved the lodging of the FIR and registration of the case at the police station vide general diary entry No. 12 Ext. Ka 8. He had also proved copy of various entries in the general diary relating to the deposit of sealed bundle containing blood-stained Bushirt and bandi of the deceased, a sealed country-made pistol and cartridge and other materials recovered from the spot by the Sub-Inspector. Then, P.W. 9 constable Prabhu Ram proved the deposit of those articles in the Malkhana and the shifting of some of them to the office of the Chief Medical Officer, Gorakhpur from the Sadar Malkhana for sending them to Chemical Examiner. Similarly P.W. 11 Budhani, clerk of the office of Medical Superintendent, District Hospital, Gorakhpur, and P.W. 12 Ram Pyare Gupta constable are also providing the same link evidence about the custody of the recovered articles.

10. P.W. 6 Layak Ahmad was the Station Officer, Campiarganj in July, 1977 at the time of incident. The FIR was not lodged in his presence. On coming to know of the case he took up investigation from the Sub-Inspector Hansnath Misra who had begun investigating the matter. He inspected the spot and prepared a siteplan and then recorded the statements of Ram Nayan, Ram Bharosh and Saran Kahar apart from others. He came to know Ram Palat's surrendering in the court and then completed the investigation and filed the charge-sheet as noted above. The report of the Chemical Examiner has been tendered by the prosecution showing that bandi, Bushirt, cement pieces and the pellets were, blood-stained.

11. P.W. 10 Hansnath Misra was present when the FIR was lodged and he being the Sub-Inspector took up the investigation in the absence of the Station Officer. He recorded the statement of Ram Suresh at the police station. He went to the spot with the informant and found that the appellant Ram Prit was in custody. He was interrogated. He sealed the recovered country-made pistol and cartridge and prepared necessary memos. and sent the appellant to the police station along with two constables and directed the dead-body of Girjesh to be sent for post-mortem examination after preparing its inquest report in accordance with law.

12. P.W.1 Ram Suresh, P.W.2 Saran Kahar, P.W. 3 Ram Bharosh and P.W. 4 Ram Nayan are the eye-witnesses examined by the prosecution. The learned trial Judge has placed implicit reliance on the testimony of those four persons and on the basis of their evidence, he has convicted and sentenced the appellant as noted above.

13. Sri Siddharth Shukla, learned counsel for the appellant has argued the case vehemently and criticised the prosecution witnesses on one ground or the other, lastly he had argued that the charge of Section 302, IPC as well as Under Section 25 of the Arms Act has not been proved against the appellant. Sri Jagdish Tewari learned Addl. Govt. Advocate has however, supported the judgment.

14. P.W. 1 Ram Suresh is the brother of the deceased Girjesh and he has narrated the entire prosecution story as noted above. The criticism against him was that he is a Brahmin and the appellant is a Chamar and since there was enough bad blood going on between these two communities in village Ratanpurwa, his testimony should be rejected. Through the defence papers it was sought to be made out that they should provide enough reason for false implication. However, those documents do not connect either the appellant or the present witnesses. Even some individual incidents may be said to be proved by those FIRs, it is of no relevance in the instant case. It may be remembered that the actual reports were not proved nor has it been shown as to what happened to those reports. Further argument of the learned counsel for the appellant that P.W. 1 Ram Suresh should have filed the prescription etc. to prove the consultancy he got for the appellant from his brother. It was wholly unnecessary to expect

production of the prescription because one does not know whether it was actually handed over and retained. Similarly, the criticism that the informant could not give the details of the medicines purchased should be a reason to reject his testimony is also baseless. On the facts and circumstances the statement of informant that one Dr. Adhya Singh told him on seeing the pills that the appellant had charged more for the medicine cannot be rejected. In spite of detailed cross-examination nothing could be elicited to warrant discrediting his statement.

15. Similarly the statements of P.W. 2 Saran Kahar, P.W. 3 Ram Bharosh and P.W. 4 Ram Nayan also inspire confidence. There is no reason whatsoever emerging out from their statements on the basis of which their testimony may be rejected.

16. One further argument has to be met here. Sri Shukla argued that the injuries sustained by the deceased Girjesh could not have been caused by one gunshot. This argument has to be mentioned only to be rejected as it has come in the evidence of the witnesses and the doctor that the injuries were of one gun shot. It was said that P.W. 4 Ram Nayan was not a resident of the village of the incident and, therefore, his testimony should be rejected as he was a chance witness. From his statement however, it appears that his cousin sister was married to Ram Ashrey of village Ratanpurwa and he may be distantly connected with Girjesh. According to the statement his presence on the spot is probable and there is no error in the trial Court's assessment in placing reliance upon his testimony.

17. In view of the aforesaid discussions, the prosecution case against the appellant as regards the manner of the incident and his arrest on the spot with the pistol cannot be doubted. A faint attempt to allege that the recovery of the pistol was fake has to be nipped in the bud. The cartridge was attempted to be fired at the second instance was also recovered. The fired cartridge was found stuck up in the barrel for which memoranda were prepared. The cycle was being driven by the appellant in which the bag (Jhola) was hung and once the altercation had heated up it is he who took out the country made pistol from the Jhola and fired at the deceased where after he was surrounded by the witnesses and arrested then and there. Consequently the charge Under Section 25 of the Arms Act was also fully

established against the appellant.

18. It was rightly pointed out that the learned trial Judge has referred to the inciting words 'Haram Ki Kamai' only dealing with the aspect as to whether there was grave and sudden provocation to the appellant or not and that he has not considered the effect of the abuse 'Chamar Hone Ke Nate Dimag Barh Gaya Hai' followed by catching hold of Ram Palat by the neck and felling him on the ground. This criticism is reasonable and thus the entire argument as to what offence is made out against the appellant merits a detailed consideration. It is nobody's case that the appellant had not been practising medicine or that he had any fake Degree with him. The case of the prosecution contrary to this is that for regular treatment of Girjesh his brother Ram Suresh, informant had purchased medicines from the appellant. From the statement of P.W. 1 Ram Suresh it is not clear as to what was the basis of his assessing that the appellant had charged more price for the medicines supplied. The opinion of one Dr. Adhya Singh may or may not have been correct. Under the circumstances it is difficult to believe that the appellant had charged more price for the medicine. The allegation that Girjesh had not come round his ailment after the treatment of the appellant again does not indicate anything extraordinary because within a period of two or three days a patient may react or may not react to the treatment prescribed.

19. At this stage comes the crucial action of P.W. 1 in challenging the appellant by saying 'Haram Hi Kamai Kab tak Chalegi'. Not only that, charge of having taken excess price was also levelled publicly. In the FIR it is clearly written 'Isee mein Batchit Barh Gayee'. This indicates that heated altercation started for which the credit should go to the prosecution side. Nothing was done by the appellant or even the co-accused so as to enrage the informant or his brother. Thereafter the case of the informant is that 'Mere Bhai Ne Kaha Ki Chamar Hone Ke Nate Dimag Barh Gaya Hai Aur Ram Palat Ko Dhodha Pakar Ka Dhakel Diya Aur Wah Gir Para Itney Par Ram Palat Ne Kaha Ki Is Brahman Sale Ka Dimag Barh Gaya Hai Maro Sale Ko'.

20. Though the task is difficult and the finding may per-force be presumptuous, the Court will have to find out the impact and repercussion, such behaviour shown and

utterances made in full public gaze were likely to have upon the appellant. In this connection, the ills of the caste-system and the vigorous crusade against it by founders of our 'freedom-movement' ending with the conferment of the fundamental right of 'equality before law' on every citizen of this country, shall have to be noted here, imagining the aspirations of the appellant in the contemporary national set-up. Then alone it can be concluded whether the act of the appellant can be somewhat mellowed down by the impulsive force known as 'grave and sudden provocation'.

21. Swami Vivekananda, in one of his famous lectures 'The Mission of the Vedanta' delivered on his return to India after his triumphant visit to the western countries, dwelling upon the ills of our prevalent caste system and comparing it with the caste system of those countries, beckoned us in his inimitable style :--

'.....Ay, let every man and woman and child, without respect of caste or birth, weakness or strength, hear and learn that behind the strong and the weak, behind the high and the low, behind every one, there is that Infinite Soul, assuring the infinite possibility and the infinite capacity of all to become great and good..... Arise, awake, and stop not till the goal is reached. Arise, awake. Awake from this hypnotism of weakness. None is really weak; the soul is infinite, omnipotent, and omniscient. Stand up, assert yourself, proclaim the God within you, do not deny Him Too much of inactivity, too much of weakness, too much of hypnotism has been and is upon our race. O, ye modern Hindus, dehypnotise yourselves. This cycle is turning round now, and I draw your attention to this fact. Therefore, our solution of the caste system is not degrading those who are already high up, is not running amuck through food and drink, is not jumping out of our own limits in order to have more enjoyment, but it comes by everyone of us, fulfilling the dictates of our Vedantic religion, by our attaining spirituality, and by our becoming the ideal Brahmin..... There is a law laid on each one of you in this land by your ancestors, whether you are Aryans or non-Aryans, Rishis or Brahmins or the very lowest outcaste. The command is the same to you all, that you must make progress without stopping, and that from the highest man to the lowest Pariah, every one in this country has to try and become the ideal Brahmin. This Vedantic idea is applicable not only here but over the whole world. Such is our ideal of caste as

meant for raising all humanity slowly and gently towards the realisation of that great ideal of the spiritual man who is non-resisting, calm, steady, worshipful, pure and meditative. In that ideal there is God'. Remember always that there is not in the world any other country whose institutions are really better in their aims and objects than the institutions of this land. I have seen castes in almost every country in the world, but nowhere is their plan and purpose so glorious as here..... Therefore, utter no words of condemnation. Close your lips and let your hearts open. Work out the salvation of this land, and of the whole world, each of you thinking that the entire burden is on your shoulders. Carry the light and the life of the Vedanta to every door, and rouse up the divinity that is hidden within every soul.'

22. The remedying methods suggested by Swamiji infact worked miracles on our society. The rigidity in the caste system prevailing in the earlier times came to be replaced by feeling of 'equality of men'. A gradual transformation in our socio-economic and socio-political systems came to be noticed. Swamiji's prophetic analysis of his country, backed up by his sincere optimistic guidelines for the future generations have been set out in his works and writings.

23. Mahatma Gandhi, while paying homage to Swamiji in Belur Math on G. 6-2-1921 has said :--

'I have gone through his works very thoroughly and after having gone through them the love that I had for my country became a thousand-fold. I ask you, young men, not to go away empty-handed without imbibing something of the spirit of the place where Swami Vivekananda lived and died.'

24. Netaji Subhash Chandra Bose, the ideal of the youth of twentieth century-India observed :

'The foundation of the present freedom movement owes its origin to Swamiji's message. If India is to be free, it cannot be a land specially of Hindu or of Islam it must be united land of different religions, communities inspired by nationalism.'

25. Pandit Jawahar Lal Nehru, the Architect of modern India as its first Prime Minister, has observed :--

'So what Swamiji has written and said is of interest and must interest us and is likely to influence us for a long time to come. He was not politician in the ordinary sense of the word and yet he was, I think, one of the great founder, if you like you may use any other word, of the national modern movement of India.....'

26. India, in the turbulent times of British Rule, steered through political oppression and started making serious attempts to get rid also of the caste-system which had turned into decrying of one set of citizens as untouchables by another. Therefore, it was considered in the fitness of things that after India attained Independence the aforesaid ideal 'Behind Everyone There Is That Infinite Soul' was incorporated in the [Constitution of India](#) through Article 14 to 18. More particularly, Article 17 may be noticed. It says :--

'Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law'.

27. The parliament then proudly passed Untouchability (Offence) Act, 1955 as it was noticed that 'this cancer of Untouchability has entered into very vitals of our society. It is not only a blot on the Hindu religion but it has created intolerance, Sectionalism and fissiparous tendencies. Many of the evils that we find in our society today are traceable to this heinous monstrosity.....'

28. By Untouchability Offences Amendment and Misc. Provisions Act, 1976, the aforesaid Untouchability Act was amended renaming it as [Protection of Civil Rights Act, 1955](#) and provided for heavier punishments.

29. The last enactment on the point appears to be the Scheduled Caste and Scheduled Tribes (Prevention of Atrocity Act), 1989.

30. Keeping the aforesaid development of individualistic freedom in mind, how much balance should be expected of a young man belonging to low caste who recently became a doctor when abuses were hurled on him publicly only because

he was of low caste. There could be no manner of doubt that had P.W. 1 and the deceased not voluntarily picked up quarrel with the appellant and the co-accused, nothing would have happened. They chose a public place for it in broad-day light when others were having full view of the incident. The intervening factor of altercation may indicate that the appellant had not resorted to firing at once. The prosecution evidence itself further indicates that the appellant did so at the asking of his compounder Ram Palat who had been pushed by the neck and floored by the deceased. May be that the appellant had thought by then that if immediate action is not taken to stop the prosecution side, they may cause injuries to the appellant or Ram Palat. The appellant is thus guilty of culpable homicide not amounting to murder as he fired the pistol under 'grave and sudden provocation'. He did not intend to cause death but Girjesh died of injuries as were likely to cause his death.

31. In view of the aforesaid discussions while the prosecution case has to be accepted, the totality of the circumstances indicate that the appellant had acted under grave and sudden provocation and, therefore, the charge proved against him will be that of Section 304, Part (I) IPC. and not Under Section 302, IPC. Sri Shukla has, however, argued that if the appellant is found guilty Under Section 304, IPC, the sentence of imprisonment for a very small term may be imposed because the incident is of 1977 and about 12 years have already elapsed. This argument has been duly considered. A sentence of 5 (five) years R.I. appears to be just and proper Under Section 304 Part (I) IPC. in this case. As regards the charge Under Section 25 of the Arms Act, it has already been held above that the same stands fully made out against the appellant and the sentence awarded has to be upheld. Both the sentences will run concurrently.

32. The appeal is consequently partly allowed. The conviction of the appellant Under Section 302, IPC and the sentence of imprisonment for life are set aside. Instead, the appellant Ram Prit is convicted Under Section 304 Part (I) IPC and sentenced to five years R.I. His conviction and sentence of two years R.I. Under Section 25 Arms Act is upheld. Both the sentences will run concurrently. The appellant is on bail. He shall surrender to his bail bonds to serve out the sentence awarded by this Court.

