

Ratan Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-24-1973

Reported in : 1973CriLJ1101

Judge : D.S. Mathur and ; H.L. Capoor, JJ.

Appellant : Ratan Singh

Respondent : State of U.P.

Judgement :

D.S. Mathur, J.

1. This is an appeal by Ratan Singh against his conviction of an offence punishable under Section 302, I.P.C. for committing the murder of Birbal inside the latter's tailoring shop in village Kota, police station Gulaothi, on September 19, 1969. at about 4 P.M. He has been awarded the lesser sentence of imprisonment for life.

2. It is the admitted case of the parties that Birbal, deceased, and Ratan Singh appellant were friends and were not at all on bad terms. There is also nothing to show that there could be any prior intention to commit the murder. The murder is said to have been committed on a very petty matter, namely, the refusal of Birbal to accompany Ratan Singh to assist in chopping fodder.

3. Birbal, deceased, and his brother Jaipal Singh, P.W. 1, have a tailoring shop in the village which consists of three portions. On the fateful afternoon Birbal was stitching a coat in the northern portion while Jaipal Singh, P. W, 1 and his two apprentices Shiv Kumar, P. W. 3 and Ram Kumar were working in the middle portion. Smt. Anguri, P.W. 2, daughter of Jaipal Singh had come there to call her father to come to the house and to feed the cattle. The house of Jaipal Singh and Birbal is close to the shop but lies on the other side of the road. It was then that the appellant arrived and asked Birbal to accompany him to assist in chopping fodder. Birbal refused on the ground that he was busy. The appellant did not like the refusal with the result that words were exchanged between the two. Birbal had then got up putting aside the coat which he was stitching. The prosecution case is that after warning Birbal that the consequences for the refusal shall be serious he (Ratan Singh) took out a knife and stabbed Birbal on the left side of the chest below the nipple. As a result of this injury Birbal fell down dead at the spot. Thereafter the appellant fled away. Jaipal Singh and others and also the passersby, namely. Ram Saran, P.W. 4, and Alia Mahar. P.W. 5. chased the appellant but could not arrest him. It is further alleged that chase was given up when the appellant threatened to stab the pursuers.

4. Jaipal Singh had the report Ex. Ka-1 written in the village and took it to police station Gulaothi where formal first information report was registered at 7 P.M. S. I. Hari Raj Singh, P.W. 7. then commenced the investigation and reached the scene of offence at about 9 P.M. He first of all held an inquest on the dead body and sent it to Bulandshahr Mortuary for post-mortem examination. He took in his possession blood stained earth from the floor of the shop and thereafter examined witnesses. The appellant could not be arrested and he surrendered before the Magistrate on 12-10-1968.

5. Ratan Singh appellant pleaded not guilty and alleged that on the day of the murder he was in Delhi. His case is that in connection with the illness of his mother he was staying in Delhi and returned to the village about a fortnight after the murder. It was suggested that Birbal was a person with weak intellect and either he committed suicide or had been murdered. It was further suggested that Jaipal Singh had a case made out against the appellant because he had once caught

Jaipal Singh and Birbal's wife in a compromising situation and reported the matter to Birbal. He pleaded enmity with Hari Singh and the members of his group suggesting that he was also responsible for making out this false case. No evidence was adduced in defence.

6. Both these pleas raised by the appellant have not been proved nor do they appear to have any substance. In case there was any illicit intimacy between Jaipal Singh and the wife of Birbal, she would not have left her husband's place and would not have continued to live with her parents. In case there was any litigation with Hari Singh or his relations, copies of papers could be filed to prove such litigation. In these circumstances, it must be held that there was no enmity between the appellant on one side and the witnesses, in fact, the residents of the village, on the other.

7. The plea of alibi cannot also be accepted. In case the appellant's mother was ill he could have adduced some evidence that his mother was confined in hospital or was being medically treated at Delhi. A person who was of weak intellect and could commit suicide would not have been, at the time of the suicide, doing his normal work. In other words, none of the pleas raised in defence have any substance.

8. This takes us to the consideration of the evidence adduced by the prosecution.

9. Two eye-witnesses of murder are Jaipal Singh, P. W. 1 and Shiv Kumar, P.W. 3, who were then working in the same shop though in the adjoining portions thereof. The house of Jaipal Singh is very close to the shop. In case Smt. Anguri P.W. was created as an eye-witness she could easily be called upon to say that on hearing the alarm she came out of the house and saw the appellant running away with a knife and when she went to the shop she found her uncle dead. The presence of Smt. Anguri in the shop can, therefore, be accepted.

10. Ram Saran and Alia Mahar P.W. 5, reside at a distance of about half a furlong from the shop. But, it is not necessary that a person should remain in his house all the twenty-four hours. People always go to the market and can witness even happenings away from their houses.

11. Ram Saran stated in the committing court that he had witnessed the assault also, but before the Sessions Judge he merely stated that he saw the appellant coming out of the shop and running away. The prosecution declared Ram Saran hostile but we are of the opinion that before the Sessions Judge he stated only what he had seen without associating the fact that he later on found the dead body and the natural assumption was that the appellant had murdered Birbal. Ram Saran, however, made one incorrect statement. He denied to have been cultivating the land of Shiv Sahai, but Alia Mahar admitted this fact. Too much importance cannot be attached to this incorrect statement, but his testimony, can be viewed with caution and be not accepted unless corroborated by reliable evidence. Alia Mahar, as already indicated, is also an independent witness.

12. There do exist a few contradictions in the evidence of these witnesses, but in our opinion also they are not of any importance. These contradictions have already been commented upon by the learned Sessions Judge and no useful purpose would be served by repeating them. We have no hesitation in accepting the testimony of the eye-witnesses.

13. It is also contended on behalf of the appellant that a presumption against the prosecution be drawn from the fact that no immediate neighbour has come forward to give evidence in the case. At 4 P.M. people would be busy in their daily work and they may not be at their houses, Persons inside the houses may come out late and may not be able to witness the event. Importance could have been attached to this factor only if the eye-witnesses examined were interested persons or they had not made satisfactory statement.

14. The prosecution has thus proved beyond doubt that he was Ratan Singh appellant who had stabbed Birbal with the knife in the latter's tailoring shop in village Kota.

15. The next point for consideration is whether the offence of murder was proved or the conviction be for the lesser offence of culpable homicide not amounting to murder. The injury is such which can leave no doubt that it was sufficient in the ordinary course of nature to cause death. The intention to inflict the injury on the chest can also be assumed. Consequently, unless the case falls in one of the

Exceptions to Section 300. I.P.C. it shall be a case of murder. Initiative in the exchange of hot words was not taken by Birbal. It cannot, therefore, be said that the appellant had acted under provocation. The maximum which can be said in favour of the appellant is that the present is a case of sudden fight without premeditation in the heat of passion upon a sudden quarrel, but that by itself shall not be sufficient to bring the case under Exception 4 to Section 300, I.P.C. Exception 4 runs as below:

Exception 4 Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

The last portion of Exception 4 makes it, clear that where the offender takes undue advantage or had acted in a cruel or unusual-manner the benefit of the Exception cannot be given to him. In the instant case, Birbal was evidently unarmed and the appellant had inflicted the fatal injury with his knife. The injury was caused on the chest with such a force that it had punctured the pleura, left lung, pericardium and the heart. There could be no occasion to cause such an injury on an unarmed person. The nature of the injury makes it clear that the appellant had acted in a cruel manner. His behaviour in using the knife on Birbal's refusing to assist that time in chopping fodder is also unusual. It can also be said that he had taken undue advantage of the fact that he had a knife with him while Birbal had no weapon of assault in his hand. As the appellant had acted in a cruel manner the case does not fall in Exception 4 to Section 300, I.P.C. and the offence would be of murder punishable under Section 302, I.P.C. Similar view was expressed in *Abdul Aziz v. Emperor* AIR 1933 Pat 508 : (1934) 35 Cri LJ 725 and in *Bashir v. State* : AIR1953 All668 .

16. Comments may now be made on certain decisions brought to our notice by the learned Counsel for the appellant. In *Devi Dayal v. The State* AIR 1955 N. U. C. (Punj) 3432 the benefit of Exception 4 was given because the deceased and the appellant had met originally on fair terms and it was only after some hot words had been exchanged that the deadly injury was inflicted. Exception 4 to Section 300,

I.P.C, reproduced above, nowhere lays down that it is the original conduct of the offender which has to be seen while determining whether he had taken undue advantage or had acted in a cruel manner. When the wording of Exception 4 is general, it must be given effect to even in those cases where the offender had acted in a cruel or unusual manner or had taken undue advantage at a later stage of the quarrel.

17. The other case can be distinguished on the ground that the injuries were caused not by knife but by lathi or in case of knife injury, the injury was caused in circumstances to show that there was no intention to inflict an injury on a vital portion as to cause immediate death. In *Maha-narain v. Emperor* : AIR1946 All19 the knife was not of a dangerous character and the blow was struck without aiming at any particular part of the body : it landed on a part of the deceased's body which was not far removed from a vital organ, namely, liver. In *Sir-kar v. Ananthan Kuttan* AIR 1950 Tra-Co 12 : 51 Cri LJ 653 the knife injury was caused on the back. The exact location of the injury has not been mentioned in the Report. In *Bhanubhai Ramnath Dave v. fixate* : AIR1956 Bom267 the injury was caused with a pen-knsife on the neck where the injury is not fatal unless artery is cut. *Shyam Lai alias Sh]/ama v. State*, 1971 Cri LJ 978 (All.) is a (case where the first two injuries caused wdre not on vital parts of the body. The fffjtal injury in the abdomen was caused wJien the deceased suddenly turned towards the assailant. It was thus on account of the movement of the deceased that the knife hit the abdomen otherwise injury may have been c&used; to a non-vital portion.

18. We are thus of opinion that even though the present may be a sudden fight, the appellant cannot be given the advantage of Exception 4 to Section 300, I.P.C. ;md the offence committed by him is one of murder punishable under Section 302, I.P.C.

19. The appeal has no force and is hereby dismissed. Ratan Singh is on bail. He shall be taken into custody forthwith to serve out the sentence awarded to him. His. bail bonds are cancelled.