

Ram Charan Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-29-1991

Reported in : 1992CriLJ1567

Judge : Palok Basu, J.

Acts : Indian Penal Code (IPC) - Sections 304; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1983 of 1979

Appellant : Ram Charan

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Keshav Shahai, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Palok Basu, J.

1. This appeal by Ram Charan has been filed against his conviction under Section 304, I.P.C. and the sentence of eight years' R.I. passed by the First Additional

Sessions Judge, Rampur, on 31-5-1979 in Sessions Trial No. 218 of 1978.

2. The prosecution case in brief was that Ram Charan had executed a usufructuary mortgage of his land measuring about 8 bighas about 10 years ago in favour of Nanna deceased for a sum of Rs. 1200/-. This land was again mortgaged by him to Salamat, co-accused, for a sum of Rs. 2500/- and by the said amount he had purchased a tonga. Consequently Salamat and Ram Charan asked Nanna to surrender the land at which he said that when the amount was paid he would do so.

3. On 31-6-1978 at about 9.30 p.m. P.W. 1 Mohd. Hanif, who is the sister's husband of deceased Nanna, was sitting in his house along with P.W. 3 Smt. Jameela, wife of Nanna and some others. The appellant Ram Charan and co-accused Salamat came there and told Nanna that the amount was ready and he should accompany them. Consequently Nanna went towards the house of accused Ram Charan. It is said that P.W. 2 Chunna had in the meantime come from the other direction and was present in front of the house of Ram Charan when inside his Kotha Nanna was thrown on the ground by the two accused and at the asking of Salamat several Daranti blows were caused by the appellant. A lantern was burning in which all this incident was seen by the witnesses from outside the house of appellant Ram Charan. When the witnesses wanted to make an entry the accused said that they would also be killed similarly. After the accused had left, the witnesses found that Nanna was dead inside the Kotha of appellant Ram Charan. A first information report is said to have been lodged by P.W. 1 Mohd. Hanif at 10.30 p.m. in the presence of P.W. 11 Jasram Singh who was the Station Officer of Police Station, Bilaspur. Relevant general diary entries were made and the case was registered as proved by Exs. Ka-2 and Ex. 3. It is said that the Station Officer started for the place of occurrence after recording the statement of the informant. He got the inquest done and the necessary documents Exs. ka-12 were prepared and the dead body was sent through constables Suraj Singh and Lajja Ram for post mortem examination. The post mortem examination of the deceased was conducted by Dr. R. K. Mishra, P.W. 6, on 14-6-1978 at 11.30 a.m. The following ante-mortem injuries were found on the body of the deceased vide post mortem report Ex. ka-5 :--

1. Incised wound 20 cms. x 3 cms. x 14 cms. on back of neck upper part where it joins the head, cutting vertebral column, spinal cord, muscles of neck, blood vessels and nerves of neck, extending between the tusear (lower part).
2. Incised wound 24 cms. x 3 cms. x 5 cms. on rt. side neck, 1-1/2 cms., below rt. part of injury No. 1 and extending to rt. part of lower jaw.
3. Incised wound 4 cm. x 2 cms. x 3 cms. on outer middle rt. arms, arm bone partly out under this injury.
4. Incised wound 9 cms. x 3 cms. x 3 cms. on back of rt. forearm just below. Cutting radius bone.
5. Incised wound 2 cms. x 1 cm. x skin, 4 cms. below injury No. 4.
6. Incised wound 1 cm. x 1 / 2 cm. x skin on rt. side chest, 16 cms. below axilla.
7. Incised wound 2 cms. x 1 cm. x skin on rt. side chest, 14 cms. below injury No. 6.

The death was said to have been caused due to shock and haemorrhage due to the injuries received by the deceased. Clothes of the deceased Exs. 5 to 7 were sent to the police station in a sealed cover.

4. In order to prove its case the prosecution had examined three eye-witnesses, P.W. 1 Mohd. Hanif, P.W. 2 Chunna and P.W. 3 Smt. Jameela, wife of the deceased.

5. The appellant, however, denied his participation in the crime as alleged by the prosecution and came out with an entirely different version. He explained that he was first attacked by the deceased by Lathi whereafter in order to save his own life he had used Daranti. In order to lend support to the defence version he examined three witnesses, D.W. 1 Manzoor Ali, and DW. 2 Dr. Bachchan Khan have supported the version pleaded by the accused in defence. D.W. 3 Dr. R. R. Mishra, Medical Officer II, P.H.C. Bilaspur, Rampur, examined the accused Ram Charan at 10 a.m. on 14-5-1978 and found the following injuries on his person vide injury report Ex. kha-1 :--

1. Linear abrasion 7 cm. x 4 cm. above lt, nipple.
2. Linear abrasion 8 cm. just above lt. nipple. 3. Linear abrasion 8 cm. lt. side chest, jut below lt. nipple.
4. Linear abrasion 11 cm. lt. side chest, 1 cm. from mid line.
5. Linear abrasion 5 cm. lt. side chest 1/2 cm. from injury No. 1.
6. Linear abrasion 4 cm. rt. side chest 2 1/2 cm. from rt. nipple.

6. It may be relevant to mention here that Salamat had produced original sale deed dated 14-3-1978 executed by Ram Charan in his favour. The learned trial Judge after discussing the entire evidence at length, came to the conclusion that the prosecution case was false. He further recorded a categorical finding that Salamat's participation was not proved. He also doubted the prosecution case that the incident had happened inside the house of Ram Charan appellant. It may be relevant to point out here that the State has not filed any appeal against the acquittal of Salamat and those findings have become final.

7. The learned trial Judge, however, was of the view that the appellant has failed to prove that part of his statement by which he attributed to deceased Nanna certain amount of role in causing him lathi injuries. Examining the probabilities of the defence the trial Judge held that it will not be safe to hold that the lathi was in fact used by the deceased. It is this finding which has been seriously challenged by Sri Keshav Sahai, learned counsel for the appellant. Sri Sahai has argued vehemently that once the prosecution story about origin of the marpit has been rejected by the trial Judge inasmuch as the appellant's version has been partially accepted, there being no explanation of the injuries sustained by the appellant coming through the evidence of the prosecution, the defence version should be deemed to have been fully established. Sri Doodhnath Yadav, learned A.G.A. has, however, argued that though this is a fact that the State has acquiesced to the acquittal of Salamat. Yet it can be legitimately argued on behalf of the State that since the accused had failed to prove his version beyond doubt, the trial Judge's view that an offence under Section 304, I.P.C. has been committed by appellant

Ram Charan, should be upheld.

8. The law on the point is well settled and does not require any further enunciation. If the prosecution has failed to prove its case and the version of the accused is probalised by existence of injuries on his person which are not explained by the prosecution at all, the question of any offence being committed by the accused under these circumstances does not arise. In this connection Sri Yadav has argued that the injuries sustained by the appellant does not indicate that he has suffered injuries because he was, in fact, thrown on the ground by deceased Nanna as is pleaded by the appellant in his statement under Section 313, Cr.P.C. The other point emphasised by Sri Yadav during the course of argument was that the type of injuries sustained by the appellant may well have been caused by nails etc. and the use of lathi, may not have been resorted to. Under these circumstances he emphasised that the view of the trial Judge is correct. To repeat, the argument of Sri Yadav is as fallacious as the reasoning of the learned trial Judge. It is not the duty of the accused to prove his case beyond reasonable doubt. It is enough that he establishes the preponderance of the probabilities in his favour and the plea of self-defence taken by him. The existence of injuries on the appellant and the rejection of the entire prosecution case by the trial Judge are enough in the present appeal for this Court to hold that the accused has been able to create preponderance of probabilities in favour of his statement duly supported by his witnesses and, therefore, his conviction under Section 304, I.P.C. cannot be sustained.

9. In view of the aforesaid discussion the appeal is allowed. The conviction and sentence awarded to Ram Charan appellant are set aside. He is on bail. He need not surrender and his bail bonds are discharged.