

Ram Murti and ors. Vs. the State

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Court : Allahabad

Decided On : Dec-19-1991

Reported in : 1992CriLJ2278

Judge : Surya Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304, 323 and 504

Appeal No. : Criminal Appeal No. 2610 of 1979

Appellant : Ram Murti and ors.

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : V.C. Tiwari and Tej Pal, Advs.

Disposition : Appeal allowed

Judgement :

Surya Prasad, J.

1. This is a criminal appeal against the judgment and order of the then IV Additional Sessions Judge, Agra dated 4-9-1979 in Sessions Trial No. 158 of 1978 convicting and sentencing the appellants under Section 304, Part II read with Section 34, IPC. to undergo seven years rigorous imprisonment, Under Section

323 read with Section 34, IPC to undergo one month's rigorous imprisonment and further Under Section 323 read with Section 34, I.P.C. to undergo one month's rigorous imprisonment.

2. The prosecution case briefly stated is that there had been an old enmity between the deceased and the accused. The immediate cause for the incident was the dispute in respect of an open land existing near the house of the deceased. It is alleged that the informant Bhanwar Singh's father Suraj Bhan deceased, his mother Smt. Imarti Devi and sister Ram Beti were standing on 30-4-1977 at 8-00 a.m. in front of their house. The house of the accused is in the neighbourhood of the house of the deceased. The accused asked Suraj Bhan and others why they were standing there, whereupon Suraj Bhan expressed that they were, standing on their own land. The accused retorted him saying that they would make them stand there and started assaulting Suraj Bhan with lathies with the result that Suraj Bhan received injuries on his head and other part of his body. Smt. Imarti Devi and Ram Beti rushed to his rescue and consequently they were also assaulted. On the alarm being raised, the witnesses reached the spot and intervened. The accused while hurling abuses, fled away. All three injured were taken to the police station Pinahat by Bhanwar Singh P.W. 2 who lodged the First Information Report Ex. Ka-2 there at 11-00 a.m. A case was registered against the accused Under Sections 323 and 504, IPC.

3. Suraj Bhan, Smt. Imarti Devi P.W. 3 and Ram Beti were medically-examined by Dr. Ram Chandra Singh Chauhan P.W. 8, who was then posted as the Medical Officer, Primary Health Centre, Pinhat. Suraj Bhan was referred to the District Hospital, Agra for advice and treatment. As his condition was serious, he was shifted to the S. N. Hospital, Agra for treatment. He died there on 10-5-77 as a result of the aforesaid injuries.

4. On the death of Suraj Bhan the case was converted into one Under Section 304, IPC on 25-5-77.

5. Dr. Ram Chandra Singh Chauhan P.W. 8 found the following injuries on the person of Suraj Bhan :

1. Lacerated wound $1\frac{3}{4}$ ' x $\frac{1}{4}$ ' x scalp deep on top of head left side $3\frac{3}{4}$ ' above the left ear.
2. Lacerated wound $1\frac{3}{4}$ " x $\frac{1}{4}$ ' x scalp deep and $\frac{1}{2}$ ' above the injury No. 1. Advised X-ray of skull.
6. Dr. R.K. Sharma P.W. 1 conducted the post-mortem examination on the dead body of Suraj Bhan and found the following ante-mortem injuries thereon :
 1. Stitched wound $5\frac{1}{2}$ ', 15 stitches, over right side skull on temporal region; on cut-surgical bone hole two 2 ' x $\frac{3}{4}$ ' and $\frac{3}{4}$ ' x $\frac{3}{4}$ '.
 2. Lacerated wound 1 ' x $\frac{4}{10}$ ' x scalp, skull deep on left side skull $4\frac{1}{2}$ ' above left ear, on cut surgical bone hole $\frac{1}{2}$ ' x $\frac{1}{2}$ '.
 3. Scabbed abrasion $\frac{1}{2}$ ' x $\frac{4}{10}$ ' over back of left elbow.
7. In the opinion of Dr. R.K. Sharma P.W. 1 the aforesaid head injuries were sufficient to cause death and the cause of death was coma which was due to the head injuries which were caused by some blunt weapon.
8. Dr. Ramesh Chandra Singh Chauhan P.W. 8 also medically examined Smt. Imarti Devi wife of the deceased and found the following injury on her person :
 1. Traumatic swelling of 2 ' x 2 ' on left foot dorsal surface $1\frac{1}{2}$ ' from left lateral malar bone.
9. He also medically examined Ram Beti and found the following injury on her person :
 1. Contusion 3 ' x $\frac{1}{2}$ ' on left upper arm, lower $1/3$ rd part and left forearm upper $1/3$ rd part on lateral aspect.
10. After the registration of the case, the investigation ensued and after the completion of the investigation into the case, the charge-sheet was submitted against the accused including Ram Prasad who died after the filing of the present appeal.

11. The prosecution examined Dr. Rama Kant Sharma P.W. 1, Bhanwar Singh P.W. 2, Smt. Imarti Devi P.W. 3, Achint Kumar P.W. 4, Head Constable Ram Gopal Chaturvedi P.W. 5, the then S.O. of P.S. Pinhat Om Pal Sharma P.W. 6, the then Sub-Inspector Chandra Pal Singh P.W. 7, Dr. Ram Chandra Singh Chauhan P.W. 8 and relied upon certain documents in support of its case.

12. The accused pleaded not guilty. They have stated that the allegations levelled against them are wrong and incorrect. The accused Ram Murti has stated that Suraj Bhan was present at the time of the incident and that he (Ram Murti) was standing on his Chabutra. He has further stated that Suraj Bhan subsequently died but not of the injuries received by him. According to his further statement Suraj Bhan initially assaulted him and then he assaulted Suraj Bhan in his defence. The accused Ram Bilas has stated that he was in the Har at the time of the incident and, therefore, he does not know anything about the incident. The accused Nek Ram has stated that he was in the Khaliban at the time of the incident and, therefore, he does not know anything about the incident.

13. The accused examined Dr. Rainesh Chandra Singh Chauhan as D. W. 1 and relied upon certain documents in support of their contentions.

14. Having heard the learned counsel for the parties and having perused the evidence on record, the learned Additional Sessions Judge convicted and sentenced the accused vide his impugned judgment and order referred to above. Being aggrieved, the accused-appellants preferred this appeal against the same.

15. I have heard the learned counsel for the parties and have carefully gone through the evidence on record. There was an old enmity between the members of the family of the informant and those of the accused in respect of an open land existing in front of the house of the deceased and the Chabutra of the accused Ram Murthi. The accused Ram Murti and Ram Bilas are the sons of Sri Ram. Ram Prasad was also his son who died after the filing of the present appeal. The accused Ram Murti also lodged a First Information Report on 30-4-77 at 11-05 a.m. against Bhanwar Singh, Indra Pal and Birakh Bhan Singh about the same incident. All these facts cannot be said to be in dispute between the parties on the basis of the evidence on record.

16. Smt. Imarti Devi P.W. 3 has stated that Bhanwar Singh came to the place of occurrence after the accused had fled away therefrom. She has further stated that Bhanwar Singh did not try to save his father because he was giving fodder to his cattle at a place which was not visible from the place of occurrence and because he had no information of the Marpit. Bhanwar Singh P.W. 2 has, on the other hand, stated that he did not try to save his father on account of fear. He has further stated that he did not talk to the witnesses. Similarly Smt. Imarti Devi P.W. 3 has also stated that there had been no talks between her and the witnesses. In view of all this, it is abundantly clear that the informant Bhan Singh was not at all present at the time of the incident and, therefore, his statement about the factum of incident does not deserve to be believed.

17. According to Dr. Ram Chandra Singh Chauhan P.W. 8 Ram Beti could have possibly received the instant injury while running and slipping on a substance larger in length and smaller in breadth. Smt. Imarti Devi P.W. 3 has stated in her examination-in-chief that she and her daughter Ram Beti had fallen on Suraj Bhan Singh and that both of them received Lathi injuries. This statement does not find support from the medical report and the statement of Dr. Ram Chandra Singh Chauhan P.W. 8 who has categorically stated that Smt. Imarti Devi could not have received injury while lying on any man. She has further stated that she cannot tell how many Lathies were wielded on her because she had become unconscious. But she has subsequently denied that she had become unconscious. She has stated that Ram Prasad and Ram Murti had assaulted her husband with Lathies. But in the First Information Report all the four accused are alleged to have assaulted him with lathies. She has stated that none from her side had caused injury to any of the accused. But the injury reports regarding Ram Murti and Ram Prasad indicate something otherwise than this. She has stated that she had told the Investigating Officer that the accused had kept cowdung-cakes and that she prevented them from doing so and therefore the quarrel had taken place. But the Investigating Officer Chandra Pal Singh has emphatically denied all this. In view of all this, no implicit reliance can be placed upon the statement of Smt., Imarti Devi.

18. Achint Kumar P.W. 4 has stated that he was returning to his house after worshipping in the Lord Hanooman Ji temple. He is, therefore, a chance witness.

He has further stated that the accused were putting cow-dung-cakes in the open land and that Suraj Bhan was preventing them from doing so and consequently they started hurling abuses against each other. There is no case that the accused were putting cow-dung-cakes in the open land. Therefore, his statement to this effect is afterthought and besides the point. He has further stated that the accused came with Lathies following the ex-change of hot words and abuses between the accused and the deceased and therefore, Suraj Bhan ran away towards his house. He has also stated that the accused Ram Murti and Ram Prasad assaulted him (deceased) with Lathies in the process of his running away towards his house. There is nothing as such in the First Information Report or in the statements of Bhanwar Singh and Smt. Imarti Devi. The statement of Achint Kumar P.W. 4, if read in its entirety, does not inspire confidence.

19. Dr. Rama Kant Sharma P.W. 1 has stated that the deceased died on account of the non-cleaning of the clotted blood in the injuries caused to him. It may be mentioned that if the clotted blood had been cleaned, the deceased might not have died. Therefore, the death cannot be directly attributed to the injuries received by the deceased.

20. The Investigating Officer Chandra Pal Singh P.W. 7 has not shown in the site-plan the place from where the witnesses Indra Pal Singh and Achint Kumar had allegedly seen the incident. A perusal of his statement indicates that he did not try to prepare the site plan fairly and properly. His statement does not also inspire confidence.

21. It is not out of place to mention that the Investigating Officer Chandra Pal Singh P.W. 7 had completed the entire investigation into the case. He did not take pains to investigate the case fairly and properly as mentioned above. Sri Om Pal Sharma was the then Station Officer of the police station Pinhat. He took up the investigation into the case himself, even though the entire investigation therein appears to have already been completed although not fairly and properly by Sri Chandra Pal Singh P.W. 7. Sri Om Pal Sharma or any other authority superior to him, does not also appear to have cared to see whether the investigation into the case was properly done or not. It appears that gone are the days when the

investigation into the case was taken up and ultimately completed by only one Investigating Officer. Not only this but he also used to take keen interest in the conduct of the case until it came to an end. It was only his responsibility to investigate into the case, to submit the chargesheet and to produce the evidence in support of the charges levelled against the accused. It is for all these reasons that the cases then very rarely ended in acquittal. But the position has, now a days, become quite different particularly in so far as it relates to the aspects of the investigation into the case. Ordinarily the Officers more than one are found to investigate one and the same case. No doubt there is exception everywhere. Nevertheless the Investigating Officers, barring very few own the responsibility of the investigation into the case fairly and properly in order ultimately to enable the Court to administer justice. In the instant case neither Sri Chandra Pal Singh P.W. 7 nor Sri Om Pal Sharma P.W. 6 appears to have performed their duties conscientiously or consciously in regard to the investigation into the case. This indicates nothing but a sorry state of affairs on the part of the investigating agency.

22. The cow-dung-cakes were found in the open land in question even by the Investigating Officer at the time of his visit. Had Suraj Bhan, Smt. Imarti Devi and Ram Beti been actually present in front of the door of their house immediately before the incident, the incident would not have taken place. But it appears that Suraj Bhan had gone to the place where the cow-dung-cakes and bricks had been actually kept. It also appears that it was he, who initiated the Marpit and was subsequently assaulted with lathies. The probabilities of all this cannot altogether be ruled out.

23. It is not out of place to mention that the First Information Report is the foundation on which the entire edifice of the prosecution case is built. If the foundation is shaky, the entire structure built thereon, is bound to collapse. Whatever has been mentioned in the First Information Report in the instant case does not appear to be correct. The prosecution witnesses, named above, have resiled from what has been actually mentioned in it. Their statements are inconsistent with and contradictory to one another and therefore, do not inspire confidence as mentioned earlier.

24. There can be no dispute about the fact that the cow-dung-cakes and bricks belonging to the accused Ram Murti were kept in the open land adjacent to his chabutra and house. The deceased appears to have gone to that place and become aggressor in the incident as mentioned above. That open place can be said to have been used by the accused as a place for the custody of his property i.e. cow-dung-cakes and bricks. The accused Ram Murti is said to have assaulted the deceased with lathi and that too in his self-defence. There does not appear any intention on his part to cause such injuries to the deceased as might cause his death in due course. Therefore, the statement of the accused Ram Murti that he assaulted the deceased with lathi in his self-defence, cannot be said to be devoid of truth.

25. In the result, this appeal is allowed.-The impugned judgment and order are set aside. The accused Ram Murti, Ram Bilas and Nek Ram are acquitted of the offences with which they have been charged. They are on bail. Their bail bonds are cancelled and sureties stand discharged. They need not surrender. The accused Ram Prasad died subsequently. The appeal already abated as against him.